

**The European Union Internal Exclusion and Extra-Territorialisation of Asylum Seekers and Migrants into Camps:
Case Studies, Ukraine, Libya and Germany**

Dissertation to obtain the Academic Title of Doctor of Philosophy

**In the faculty of Political and Social Sciences
At the Otto-Suhr-Institute for Political Sciences
Freie Universität Berlin**

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Berlin 2008**

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The Day of Defence 30th of June 2008

Acknowledgements

I wish to express my sincere gratification to the following personalities who assisted me in one way or the other to realise this work.

I am most grateful to my supervisor Professor Dr. Wolf-Dieter Narr for his exceptional attitude of always being ready to discuss issues with me, give directives and materials for the realisation of this work. It is gratifying to meet an open-minded and encouraging supervisor. His encouragement contributed in my enthusiasm to finish my work.

Special thanks go to Prof. Dr. Jürgen Nowak for his readings and remarks that helped me to accomplish this work.

I am indebted to the detainees and former detainees in Libya and Ukraine for the concern and interviews they granted to me despite their hardship. This concern contributed in encouraging me in the realisation of this work.

I am as well indebted to the asylum seekers in Germany, particularly those in the state of Brandenburg and members of the Flüchtlingsinitiative Brandenburg for the courage they took to answer the questions about their living situation and for the work they are doing to improve the living conditions of the refugees in Germany.

Special thanks go to Flüchtlingsrat Brandenburg, Antirassistische Initiative Berlin for haven given me the space in their offices to carry on my research. I wish to appreciate the work they do with the asylum seekers, refugees and migrants.

My special gratitude goes to Birgit Görtz for the moral and other forms of support she gave me in the realisation of this work. She always stood by me in stressful and difficult moments.

Special thanks also go to Dr. Margaret Geitner and Dr. Penelope Scott who also read this work and made very important remarks that helped to its accomplishment.

I am very grateful with the Rosa Luxemburg Foundation for the financial support rendered to me that facilitated the task for me to realise this work. Without the support, it would have been a very tedious work.

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**The Rights of asylum and Human Rights for asylum seekers.
(The initiative group of asylum seekers in Brandenburg)**

Introduction

Asylum and migration traditions have existed since time immemorial. The word asylum comes from Greek, “Asylos”, which means, “Shelter”. What actually was lacking was the right to asylum. It was in the 2nd half of the 20th Century that individual rights of protection developed after World War II from the United Nations Organisation (UNO). The development of the law of asylum was instituted since many countries drew inspiration from the 10.12.1948 Universal Declaration of Human Rights (UDHR). Article 14 of this Declaration states “the right of every persecuted person to seek asylum in a safe country and to savour the asylum”. This Article inspired some countries in the world to carry on long standing debates on this topic. The debates developed because of events occurring in Europe before 1st January 1951:

“...Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹

This means, the right to asylum was granted to individuals fleeing from persecution to other safe and democratic countries for protection. The Geneva Convention acknowledges the fact that human rights of these people should be respected in democratically declared societies. The multiple reasons that generated the debate that led to the Universal Declaration of Human Rights on the 10th of December 1948 and finally springboard to the Geneva Convention of 1951 are independently treated below.

¹ Article 1 of the Geneva Convention for Refugees of 1951: The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429(V), adopted by the General Assembly of the United Nations on 14 December 1950. For the text of this resolution, see Official Records of the General Assembly, Fifth Session, Supplement No. 20 (A/1775), and p.48. The text of the Final Act of the Conference is reproduced in Appendix.

One of the reasons was the “experiences of racial and political persecutions through Nazi Germany”.²

The National Socialist regime of Germany at the era before 1948, created social and political victims through a de facto or a de jure, loss of state protection. The Jews, Blacks and other minority groups had to flee away from persecution and sought security in other safe states abroad.

This factor contributed to the establishment of the Convention between 1948 and 1951 by joint United Nations Organs, ad hoc Committees, and a conference of plenipotentiaries. In relation to the Convention, two main characteristics of the definition of who is a refugee were formulated, its strategic inception and its Euro centric focus.

“The strategic dimension of the definition comes from successful efforts of Western states to give priority in protection matters to person whose flight was motivated by pro-Western political values. As anxious as the Soviets had been to exclude political émigrés from the scope of the Convention for fear of exposing their weak flank, so the more numerous and powerful Western states were preoccupied to maximize the international visibility of that migration.”³

Further variable reasons for the inception of the Geneva Convention could be seen where most of the states that participated in drafting the Convention had the objective to redistribute post war refugees from the shoulder of the European states. The reason was because Europe complained that the greater majority of the displaced people caused by the second world war was heavy on Europe’s shoulder and that it will be rationale if the other nations of the United Nations could contribute in sharing in resettling both the war refugees and the mass number originating from the then Soviet Union.

“Not with standing the vigorous objections of several delegates from developing countries faced with responsibility for their own refugee populations, the Euro centric goal of the Western states was achieved by limiting the scope of mandatory international

² Heinhold, Hubert: Legal Hand Book for Refugees. Karlsruhe 2000, p. 57.

³ Hathaway, James C.: The Law of Refugee Status. Toronto and Vancouver, Butterworks 1991, p. 6.

protection under the Convention to refugees whose flight was prompted by a pre-1951 event within Europe.”⁴

Noiriel observed this and writes: “One can clearly differentiate between three phases that led to the entering into force of the Convention. In the first phase, the different representatives who took part in the discussions tried to push forward and especially defend the position of their different countries, and especially to defend the different positions that arose within the different parties of the different independent states. Then the national representatives had to defend the immediate united concluded points in the interest of their countries in front of the other delegates. In the third phase, the concluded clauses were taken to the parliament for necessary ratification. One was back in the national packet”⁵

Another reason that facilitated the drafting of the 1951 Convention for refugees was the persecution that was already well known in Western Europe and that was the persecution prevailing in the then Soviet Union where because of ideological reasons of not accepting the communist ideology, many people were persecuted. This made the West to open their doors to the anti-socialists refugees fleeing from political persecution. The West of Europe considered these people as having justified reason of “founded fears for Persecution”. According to Noiriel, “after the second world war, about 30 million in Europe were on flight”⁶

Further reason was the manner in which the refugee Convention was coined. It was in a tactful manner to favour persons who were disenfranchised by their countries of origin on various reasons like race, religion, nationality, membership of a particular social party or group, or political opinion. All these issues were commonly practised by the then Soviet Union. With this, the then Soviet Union could not absorb itself from. This means that the Geneva Convention was not really in favour of the then Soviet Union.

⁴ Hathaway 1991, p. 9.

⁵ Noiriel, Gérard: Die Tyrannei des Nationalen. Sozialgeschichte des Asylrechts in Europa. Lüneburg: zu Klampen, 1st ed., 1994, p.124

⁶ Noiriel 1994, p. 101.

Nowadays, though millions of people still flee from their home countries for protection, being afraid of the dangers they will face if apprehended by their persecutors, a greater majority of these people are cramped in asylum or detention camps and their full status as refugees go unrecognised. The reason is that:

“The grounds for flight have changed, it is argued. In the past, most refugees were fleeing from “authoritarian government regimes”, but nowadays a majority of asylum seekers seek asylum on other grounds such as “inter-ethnic conflicts”, persecution by others than the State, and “other threats to life on a large scale”. According to the paper, these (allegedly) new threats are not covered by the 1951 Geneva Convention and are “much more difficult to prove or disprove”.⁷

A great majority of asylum seekers in recent times are “humanitarian” not protected under codified international law, though they are in need of protection. These are individuals who seek protection from conditions of general armed violence or natural disaster, gross violation of human rights, military occupation, foreign domination, external aggression, bad economic stance and environmental degradation. These different nexus are urgent and stressed the need for the Geneva Convention and its Protocol of 1967 to be reformulated to include these elements. The Geneva Convention should not just be limited on individual, political, religious, or racial persecution.

Globalisation, a striking phenomenon of our time that has been extended and intensified by the Western world is now propping numerous problems. As the Western countries turn to demonise migrants as the root causes of unemployment in their society. Some authors argue that due to globalisation, labour does not need to move to the west but on the contrary, the industries move to where cheap labour is found. The conjuncture of three important factors according to Fröbel, Heinrichs and Kreye makes this thesis convincing. They say,

⁷ Busch, Nicolas: EUROPEAN UNION. EU strategy paper on asylum and immigration: Show of “Political muscle”? In: Fortress Europe? Circular Letter No. 56, Falun, Sweden, December 1998, p. 3.

Sources: Strategy paper on immigration and asylum policy, from the Austrian Council Presidency to the K4 Committee, 1.7.1998, 9809/98 CK4 27, ASIM 170, limit.

Second Draft, 29 September, 9809/1/98, Rev 1 Limit, CK4 27 ASIM 170.

“An inexhaustible reservoir of cheap labour, which is continuously replenished by an intense rural- urban migration;

Developments in production technology making it possible to separate the labour-intensive parts of the production process from the capital intensive;

Development in transport and communication technology facilitating the coordination of dispersed production and assembly establishment.” To these authors, these three factors

“Have created a single world market for labour power, a true world- wide industrial reserve army, and a single world market for production site.”⁸

It is concluded that: “the work on the New International Division of Labour has also drawn attention to the fact that migration is not the only, and for that matter numerically not the most important, way in which national labour forces directly compete with each other”⁹

In other sections of the world like Africa, Eastern Europe and Central America, globalisation has created the movement of people to Western countries. The global control of world economy by IMF and the World Bank made these financial institutions to impose the Economic Structural Adjustment Program (ESAP) on the above-mentioned sections of the world. The ESAP did not tandem with the cultural, political and social specifics of these sections of the world. Due to that Western ideology of putting a round peck into a square hole, the results were a total disaster on economy and politics. These generated political and economic crises and states collapsed which created displacements and movements of people.

Another aspect was the cutbacks of finances that the Western world used to give governments of these regions to strengthen the economy and to possess a strong military

⁸ Fröbel, F., Heinrichs, J., and Kreye, O.: Die neue internationale Arbeitsteilung: Strukturelle Arbeitslosigkeit in den Industrieländern und die Industrialisierung der Entwicklungsländer. Hamburg: Rowohlt 1997.

⁹ Overbeek, H.: Globalisation, Sovereignty and Trans-national Regulation: Reshaping the Governance of International Migration. In Ghosh, B (Eds): Managing Migration: Time for a New International Regime? Oxford: Oxford University Press 2000, pp. 48- 74.

to sustain political opponents during the so-called “Cold war era”¹⁰. Since the governments of these poor regions of the world could not meet up with the demands of the people after the financial cutbacks, the people turned to challenge the governments. This led to mass persecution of political opponents by governments still supported by the Western powers.

“These complex processes largely explain the surge in forced movements of people since the mid-70s across the globe, in search of protection and in search of a new better life”.¹¹

The narrowness of the Geneva Convention to deal with other humanitarian aspects causing displacement has facilitated the arguments of countries that are supposed to receive asylum seekers to propagate the fact that asylum seekers are not genuine but “Economic Asylum Seekers”.¹² The Western governments are constructing such arguments of who is an asylum seeker in the Geneva Convention because as already said:

“The strategic dimension of the definition comes from successful efforts of Western states to give priority in protection matters to persons whose flight was motivated by pro-western political values.”¹³

The recent world refugee crises began in the mid 1970s with mass departures of boat people from Vietnam, Cambodia and Laos, and later spread to other parts of the world. Refugees and asylum seekers fled from countries like Lebanon and Afghanistan. Later,

¹⁰ The Cold War Era is an era believed by some westerners that there was no arms confrontation but ideological confrontation between the NATO and WARSAW PACT. Actually, this ideology is not true because as Europe and America were cold, Africa, Asia and Latin America were burning from different wars originating from the Capitalists and Communists blocks as they try to implement their ideology.

¹¹ Overbeek 2000, pp. 48-74.

¹² Economic Asylum Seekers means people not persecuted as stipulated by the nexus of the 1951 Geneva Convention for Refugees and its Protocol of 1967 but because of hard economic stance in their countries of origin have to flee to seek asylum. The Protocol was signed by the President of the General Assembly and by the Secretary General on 31 January 1967. The text of the General Assembly Resolution 2198(XXI) of 16 December 1966 concerning the accession to the 1967 Protocol relating to the Status of Refugees is reproduced in Appendix.

¹³ Hathaway 1991, p. 6.

these world refugee crises like an “epidemic” stroke Africa in countries like Democratic Republic of Congo (Zaire), Namibia and South Africa and went to Latin America, in countries like Chile and Argentina. This “epidemic” later crossed into Eastern Europe when the Union of Soviet Socialist Republic disintegrated in 1991, the former Yugoslavia separated in 1992 and the former Czechoslovakia split in 1993. Though with the world refugee crisis, as already stated above, the majority of these asylum seekers and refugees are still found in their regions of origin.

“Asia hosted around two-fifths of all the people of concern to UNHCR, 8.6 million or 41%, followed by Africa 5.2 million [25%], Europe 3.7 million [18%], Latin America 2.5 million [12%], North America 716,800 [3%] and Oceania 82,500 [0.4%].”¹⁴

As from the mid 1980s, a very insignificant number of these asylum seekers, refugees and migrants in the Middle East, Africa and Asia started making their way into Europe. These entries into the E.U states prompted an aggressive reaction from the right wing in the different European countries that believe that their countries are being “swamped” with asylum seekers and “illegal migrants”. This belief led to the politicisation of migration related aspects by these right- wing politicians and sensationalist journalists in regard to asylum seekers and refugees as sources of increased crime, exploiters of the social welfare systems, usurpers of jobs for Europeans and of recent potential terrorists.

In Switzerland 2007 elections the Swiss People Party (SVP) came out with a national poster where three white sheep was kicking out a black sheep from the Swiss flag. This anti black racism was used by the SVP as a campaign strategy to stigmatise African asylum seekers and immigrants as criminals.

“The blatantly racist national poster campaign uses the image of a white sheep kicking a black sheep out of Switzerland with the caption “for greater security”. The Swiss People’s Party (SVP) is one of the most powerful parties in Switzerland’s federal Parliament and a member of the coalition government. It has ensured the ‘black sheep’

¹⁴ UNHCR Media Relations and Public Information Service: ["Protecting Refugees and the Role of UNHCR"](#), published September 2007 (pdf 3Mb), Geneva, Switzerland.

message has been distributed via mass mailing to Swiss households and reproduced in newspapers, magazines and huge billboards across the country.”¹⁵ Further,

“An SVP spokesperson defended the poster claiming that the ‘black sheep’ was a common term in European languages to signify an undesirable who didn’t play by the rules, the spokesperson went on to claim that the poster was seen as nice by children who ‘want to cut out the pictures of the sheep.’”¹⁶

Another example of a European country with anti immigration campaign was noticed in the UK, “during their 2001 electoral campaign, Tory MP, John Townend made a speech on immigration in which he said Britain's “homogenous Anglo-Saxon society has been seriously undermined by the massive immigration—particularly Commonwealth immigration...” He admitted later on BBC News that ‘commonwealth immigration’ was a code word for what he referred to as “coloured immigrants.”¹⁷ Another anti immigration campaign was recently witnessed in Germany where Roland Koch of the Christian Democratic Union (CDU) party, the Governor of the state of Hessen in the 2008 elections launched a campaign “against juvenile crime among migrants.”¹⁸

This negative reaction from the different EU governments is reinforced through “the establishment of national laws”¹⁹ in independent EU states, treaties, to control, manage

¹⁵ Ligali/ Me2We News: Swiss elections fought on racist anti-African agenda, Thu 1 November 2007. Online: <http://www.ligali.org/article.php?id=1749>, accessed on the 14th of February 2008.

¹⁶ Ligali/ Me2We News: Swiss elections fought on racist anti-African agenda, Thu 1 November 2007.

¹⁷ Ligali/ Me2We News: Swiss elections fought on racist anti-African agenda Thu 1 November 2007.

¹⁸ Williamson Hugh: Hesse Offers Pointer to National Poll's Outcome. In: Financial Times, January 26, 2008, p.4. Online:

http://www.eiu.com/index.asp?layout=FTWPrintVW3&article_id=1912978376&printer=printer , accessed on the 14th of February 2008.

¹⁹ Gräßler Bernd: First German Immigration Law Takes Effect. In: DW Germany 01.01.2005.

“The law does not afford an overall right of residence for rejected asylum-seekers who have lived in Germany a long time. The law is also meant to keep suspected foreign terrorists from legally immigrating to Germany. Before the authorities approve an application for permanent residency, Germany's intelligence agency will carry out a background check on every case.

The immigration law will also make it easier to deport foreigners suspected of terrorist links, so-called "Islamic hate-preachers" and human traffickers.”

Retrieved from <http://www.dw-world.de/dw/article/0,1564,1442681,00.html> on the 14th of February 2008.

and stop asylum seekers, refugees and other migrants and the construction of camps within the EU states and its external borders. Some of these camps are found in Eastern Europe, meanwhile others are found in regions considered to be refugee-producing regions in recent days like Africa. This is the “Fortress Europe Mentality”.

This “Fortress Europe” ideology has been defined by many as a strategy used by European countries to keep asylum seekers, refugees and other migrants away from the external borders of Europe. A situation where;

“Immigration authorities and embassies surpassed each other in inventing ever new legal and bureaucratic obstacles, clearly aimed at preventing spontaneous refugees from entering a host country by their own means or with private help. For many refugees, this entailed absurd, and sometimes, tragic consequences.”²⁰

The idea of Fortress Europe in this work is refortified with the polarisation of these different types of camps like internal camps-asylum camps, deportation camps and reception camps which are found within the borders of EU states and extra territorial camps like Transit Processing Centres (TPCs) and Regional Protection Areas (RPAs), found at the external borders of European Union states and at other regions of the world used as the first objective, instruments to contain, detain, exclude, manage and isolate asylum seekers, refugees and other migrants either already living in Europe or intending to enter Europe. That is the exclusion and externalisation of asylum seekers, refugees and other migrants from their destination countries and out of the destination countries or other countries in which they find themselves.

Until now, the erection of these different forms of camps raises many questions to be addressed. Questions of human rights, racism, isolation, stereotypes, the creation of new borders, European citizenship, the EU position on torture, dominance, international police, international law, detention and the whole concept of the asylum regime.

Another objective of this work is to broaden the definition of “Fortress Europe”. Fortress Europe is not just what is stated above, to prohibit asylum seekers, refugees and other

²⁰ Busch Nicolas: OPINION. Keeping refugees away: The NATO and EU war in the Balkans. In: Fortress Europe? Circular Letter No. 58, June 1999, p. 4.

migrants from entering Europe but also refers to how these different groups of people already found in European countries are forced through various measures of control and domination by the European governments and societies to leave or be isolated, excluded and abused. Some sort of “Ethnic Cleansing”.

The example to be used is the internal and external exclusion and externalisation of asylum seekers and migrants from Europe into refugee camps within the EU states, and detention camps under restrictive conditions, the use of Transit Processing Centres and Regional Protection Areas at the EU external borders and at other regions of the world.

These camps are governed by many laws and directives adopted by the governments in and out of Europe to drastically limit the human rights of asylum seekers, refugees and migrants in housing, health, education, labour market, shopping system, welfare system and freedom like the freedom of movement. In addition to that the main focus of this work is to study the different types of camps, their structures and functions. The study of these different types of camps will portray how most human beings misuse power. The EU governments think they have the power to wield to what ever direction that is profitable for them.

The colonial mentality is seen in the exploitation of poor countries by the EU states and at the same time instituting exterritorial camps and common EU directives to prevent these people from escaping from EU created poverty into the EU main territory. The EU countries have been scrambling over energy resources, raw materials, over fishing and destruction of waters in continents like Africa by EU companies after buying fishing permits to fish from African governments leading to the destruction of African fishing communities and other small and local enterprises which renders the population very poor. This has created both internal and international movements of these people. The EU states with its colonial mentality have responded with the institutionalisation of an iron curtain to prevent these people from reaching the Europe Union territory. In order to prevent the migrants, asylum seekers and refugees from entering the EU territory, measures like biometric details are collected which gives the EU police the possibility to strictly survey these individuals, the setting up of a mixed police force to control its borders and even operate in other countries to check the movement of people and the creation of camps to contain these individuals.

“In buffer states such as Libya and the Ukraine, a system of camps has existed for years, which is designed to obstruct the passage of refugees and migrants into the EU. Cut off from the outside world, these refugees and migrants, subjected to the arbitrary violence of soldiers or the police, are held captive in hopelessly overcrowded cells.”²¹

I really decided to work on this topic as someone who has lived in one of these form of camps in Germany as an example of European internal camps of exclusion and a political activist who in different cases was victimised by the system. And furthermore as someone, who after leaving the camp, still continues to work with other asylum seekers and detainees in internal and extra-territorial camps. One of my main focuses on this work is the approach the EU and other governments address Human rights issues. That is the total abuse of human rights in the three different camp systems.

The important hypotheses to be found out in this work, is the nature these three different camps respond to international human rights standards, address the theme of racism, necessary conditions to obtain asylum, address the question of equal space for all in the society, position to sovereignty of other states in this world of globalisation, expressing necessary freedom, and if EU states dominate other states through influencing their internal policies and reducing their sovereignty. More focus will be on how the camps look, their functions and structure, the living conditions of those found inside. What are the standards of these camps in relation to the Geneva Convention and other international human rights instruments? These points will be discovered through the comparative studies of the different elements of the three different types of camps.

In order to study these different types of camps spread all over, certain reasons made me to choose these three countries. In the case of Germany one of the reasons is personal. As already alluded I have lived in one of the asylum camps in Germany as an asylum seeker. The very hard treatment and conditions make me to mirror Germany, a European country that claims to be one of Europe’s citadels of human rights. Furthermore, my choice of Germany is linked to the specific history of the Nazi camps where six million Jews, blacks and other minority groups were exterminated. That not withstanding, Germany and other EU states are still involved in the camp business, as

²¹ Nsoh, Christopher Ndikum: Exterritoriale Lager: Libyen und die Ukraine als Pufferstaaten der EU. In: Cilip 89, Nr.1, Bürgerrechte & Polizei, Europas Grenzen: innen – außen, Berlin 2008.

an instrument to exclude and externalise unwanted people like asylum seekers and refugees. Furthermore, though Germany has a strong civil society than the other two countries, this has not stopped Germany from reinforcing the exclusion and externalisation strategy through the use of laws that do not correspond with international laws and treaties. Protests from human rights groups, initiatives, pro asylum seekers, refugees groups and NGOs are going unnoticed.

In the case of Libya, the question of how can a European Union state sign a treaty with Libya to deal in asylum issues when Libya is not a party to the Geneva Convention for Refugees of 1951 and its Protocol of 1967, on which basis are they operating? How comes that Libya that was considered as a rogue state by the EU states and the United States of America suddenly becomes a darling to the EU to the extent of being involved in asylum and migration issues? Additionally, does the question of Libyan human rights considered as one of the worst of the world play a role in the minds of the EU governments? How can the EU deal with a country with such human rights records, to build camps to detain, manage, exclude and externalise asylum seekers, refugees and migrants.

In relation to Ukraine, The result of European Union enlargement, which has created new migration challenges at its Eastern borders making Ukraine to share borders with Poland, Slovakia, and Hungary and of recent Romania. The pressure Ukraine now faces as a buffer zone and international police around the EU states to stop migrants, asylum seekers and refugees from using its territory to transit into the EU states. And how migration movements have changed since Ukraine became independent in 1991. In addition to the whole situation, the low incomes and living standards of Ukrainians and the incomplete democratic process in the country. These factors influenced me to study how Ukraine is coping with the different elements asylum seekers, refugees and migrants inclusive.

The working background in relation to this work is to demonstrate how human rights; international and refugee treaties are disrespected “paper tiger”. As well as how neither Libya nor Ukraine and the EU states inclusive, live up to the standards of international treaties. It also shows how internal laws of the different states are abused or ignored in order to enjoy the potential advantages of migration and to reduce or stop its burden.

Against this background, the different countries will be compared in relation to the manner in which these states consider international laws as well as other human rights treaties. The different political, historical and social background of these three case studies will be analysed.

This work is an accomplishment of an empirical research and secondary research. I went into the fields of the above mentioned countries-Germany, Ukraine and Libya to do observation and to conduct interviews with different groups of people like authorities, detainees, asylum seekers who are not detained, officials in NGOs. After transcription and analyses of my empirical work, I did a lot of secondary research where I read the works of other social scientists that have elaborately written on this topic of camps. In the field, I met with different people speaking different languages. For those speaking French, English and German, I directly understood them and did the necessary translation by my self but for those speaking Arabic and other languages like Portuguese, I used translators.

My work is divided into eight chapters.

Chapter I is on the method used in my work, how I went into the field, which countries I visited to observe the camps, those living in them and those already out of the camps. I used the qualitative research system to carry on my work and later, the secondary research which permits me to read other existing literatures from other scientists on camps.

Chapter II is on the European policy of camps. This means the background knowledge of camps, the theoretical development of camps. In this section, I used the works of the famous Italian political and social scientist and jurist who has become a world figure, Giorgio Agamben. I will like to emphasise that I have not theorised my work with the “push” and “pull” factors. My main topic is on the function, regime and structures of camps. I have focused on these and not reasons pushing people to move. Nevertheless, some of these reasons are brought out in the development of my work. So the common rituals usually found in some works on migration is not found in my work.

More on my theoretical part, is the historical development of colonial camps and how the different forms of camps legitimated the creation of others? That is concentration, extinction and in recent days, refugees and detention camps. Still under the European

policy on camps, I brought out the Legal framework used by the EU governments to manage and prohibit migrants into the EU states and into the society for those already inside the EU territory.

Chapter III is on the general concept and definition of Transit Processing Centres (TPCs) and Regional Protection Areas (RPAs) and other earlier existed similar projects and the general analyses of these concepts.

Chapter IV is where the first practical example of my empirical research is portrayed. Here is an example of an Extra-territorial camp found at the external borders of EU states in Ukraine. A brief history of the country is written, socio- economy situation of those in detention camps, deportation and the analysis of the situation in the independent country.

Chapter V is where the second practical example of my empirical research is found. Here is an example of another Extra-territorial camp found in Libya, in the North region of Africa. Here as well, there is a brief history of the country, socio-economy situation of those in detention camps, deportation and the analysis of the independent country.

Chapter VI is the last concrete example and it is the example of an internal camp within the EU states, found in Germany. I treated the various aspects that I did in the external camps and made its independent analyses as well.

Chapter VII is treating comparative analyses of these different forms of camps. Here, the three camps are put together and their differences and similarities in structure, functions regime and other aspects are analysed.

Chapter VIII is the last part of my work. Here I conclude my work. This part is very important because it summarises the EU migration politics in relation to the different camps and brings out a proposed possible way forward to further migration, integration and inclusion.

Chapter I. Method Used during the Research

1. Starting Point

This work is the outcome of my PhD thesis. The main focus is the camp systems erected all over the world to externalise, exclude and detain asylum seekers, refugees and other migrants. The work is particularly concentrated on camps within and beyond the borders of the EU states, Germany, Libya and Ukraine. The research of the German camps started in 2004 until today. Use of names is not in all cases in this work because some interviewees demanded anonymity. In this work, I am using the qualitative research method.

The time I put in the field was sufficient in each country to convince the asylum seekers and other detainees to understand my mission and me. It is not just an issue of one day but a continues visit that build up the relationship. This is particular with asylum seekers in Germany and former detainees in Ukraine and Libya. This time phrame also gave me the possibility to observe issues very closely and not an aspect that with one view, a conclusion was drawn.

I spent five years of my lifetime in Germany in one of these camps in Rathenow as an asylum seeker. Rathenow is a city in the state of Brandenburg. My experience in this camp made me to understand that any group of people put in a particular situation develop a life style. Those in camps believe they are not in the countries in which these camps are located though these camps are located in these countries. My personal experience as somebody who has once lived in an asylum camp is one of the driving forces to develop the method I am using for my research. Though I try to maintain scientific neutrality, I cannot completely distance myself from it because it has become part of my history and my curriculum vitae.

I also have another experience in which for the past ten years, I have spent part of my time working voluntarily with asylum seekers in Germany. In particular, with asylum seekers in the organisation known as the Initiative Group of Asylum seekers in

Brandenburg, (Flüchtlingsinitiative Brandenburg)²². Working with this organisation has made me to learn a lot on the daily life of asylum seekers, refugees and other migrants in relation to camp structures, functions and how camps affect these group of people and shape their life style completely within and beyond the borders of Europe. On the other countries like Libya and Ukraine, I made just one visit to the camps. But during my stay in these countries I passed almost all my time with those who were detained and later released.

Having lived and worked with asylum seekers in asylum camps, I still carried on fieldwork. The main objective was to learn and understand the operation of the camp system, its social structure as experienced by others without me living with them. These aspects put together have greatly influenced my choice of this particular method.

More aspect that has influenced me in choosing my method is the follow up of daily discussions on this theme. These discussions are divided in different forms, the daily discussions of the civil society that I found has made me to assemble a lot of experience, working with anti racist groups, refugee organisations, political and media discussions. I do as well follow discussions from other scientists on camps and the effect these discussions have on the civil society. By reading journals and newspapers articles on camps, assisted me in gathering a lot of information on the historical development of camps and the different positions of the camps in the civil society. With the new method of information and communication, which is the Internet, I have read and gathered useful information as well.

These reasons made me to develop an empirical phase in my work in relation to camps, deportation from camps and laws enforcing these camps.

2. Qualitative Research

The qualitative research is one of the oldest forms of research strategy that gives the possibilities to different researchers to be able to converge diversified sub topics concerning the main research topic together.

²² The Flüchtlingsinitiative Brandenburg is a self-organised group of asylum seekers fighting against the poor living conditions of asylum seekers and racism in the state of Brandenburg and in Germany, especially in the state of Brandenburg and at the same time, against the racist situation prevailing in Germany as a whole. This organisation was founded in the city of Rathenow in 1998, by asylum seekers (me included) and today it is composed of asylum seekers, refugees and migrants with regular status all over Germany.

In the work of Norman K. Denzin and Yvonna S. Lincoln in *Entering the Field of Qualitative Research*, they see the qualitative research as “a field of inquiry in its own right. It crosscuts disciplines, fields, and subject matter.”

The qualitative research is composed of many methods and approaches in which any researcher can choose one in relation to his or her work since there is no inferior or superior method of research in this theory.

Qualitative research functions in the five historical movements that are very complex and crosscuts. These historical fields are traditional (1900-1950), the modernist (1950-1970), blurred genres (1970-1986), the crisis of representation (1986-1990) and present moment (1990-Present). From these above dates, it is clear that the qualitative research covers all the ages, which makes it possible to create a space for every theme. It means different thing in the different moment. Norman K. Denzin and Yvonna S. Lincoln in *Entering the Field of Qualitative Research*, write that:

“Qualitative research is multi-method in focus involving an interpretative, naturalistic approach in its subject matter. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them. Qualitative research involves the studied use and collection of empirical materials – case study, personal experience, introspective, live story, interview, observational, historical, interact ional and visual texts-that describe routine and problematic moments and meanings in individuals’ lives.”²³

The qualitative research is a bricolage. This means that the qualitative research covers every field. What other writers define as “Jack of all Trades or a kind of professional do it yourself person” (Levi Strauss, 1996, p.17). In this case the bricoleur put pieced-together, close-knit set providing solutions to problems concretely. The bricoleur performs a large number of different tasks ranging from –interviews, observing, interpreting personal and historical documents, to introspection and historical self-reflex ion.

²³ Denzin, Norman K. and Lincoln, Yvonna S.: Introduction, *Entering the Field of Qualitative Research*. In: Denzin, Norman K. and Lincoln, Yvonna S. (Eds.): *Hand Book of Qualitative Research*. London 1994, p. 2.

Qualitative research is seen as a site of Multiple Methodologies and Research Practices. It does not privilege a practice to another. It puts all the method of research on the same scale. It has no theory or paradigm, that one can term as purposely its own. It uses semiotics, narrative, content, discourse, archival and phonemic analysis and even statistics. Norman K. Denzin and Yvonna S. Lincoln in *Entering the Field of Qualitative Research*, write that; “qualitative research is an interdisciplinary, transdisciplinary, and sometimes counter disciplinary field. It crosscuts the humanities and the social and physical sciences. Qualitative research is many things at the same time. It is multiparadigmatic in focus.”²⁴

The qualitative research method has a procedure to conduct a phenomenological research work. In this case, the phenomenological element becomes the central focus. This usually leads to certain steps to be followed to facilitate the researcher to combine complicated issues to one. In order to do this, the researcher - identifies the main phenomenon to research on, after that one will ask main research questions. That is to develop hypotheses to follow in course of the research work to reach the meaning of the research topic adopted, to collect elementary data through interviews, observation and the reading of other works, analyses of the collected data, reduce the many important statements in order to avoid repetition. In this case, the researcher eliminates overlapping statements, to analyse the context the whole setting is occurring. That is to identify personal experiences, and also take strictly into consideration the setting and structural experience, another important element is to reflect on one’s personal experiences. In this occasion, the researcher has the chance to explain the context and setting his or her personal experiences occurred. And the very last stage is to write down detail analyses of the importance of the subject matter of what was experienced and founded on the different fields the researcher went into.

2.1. The Grounded Theory

In the qualitative research strategy, I have decided to use one of the multimethods, the grounded theory. I find this theory very important as other social scientists like Barney Glaser and Anselm Strauss because this theory converges different complex aspects in a manner that is easy to understand and pursue. I applied it to develop a broad explanation of my work and the interaction of the individuals in the camps. In order to do

²⁴ Denzin / Lincoln 1994, p. 3.

this, I have developed my themes through individual's interviews in which they describe their experiences in details. It gives me the possibility to choose individuals who contributed enormously to the direct insight of my work since they have a lot of experience of the camps. With the grounded theory, I made several visits in the field where I met different people in different camps who helped me in collecting interviews data. I made so many interviews that gave me the impression that I am now saturated. That means there is no aspect of my theme that I have not really explored. If any aspect was not explored, it was because of circumstances beyond my control. I took note of it and will include them as disadvantages in the field in order to prepare future researchers.

With the grounded theory, after collecting my necessary data, I started to analyse. I found this very important because my data were some how collected in a zigzag manner. It was so because I went to the field several times, meeting the interviewees on different occasions. This made me to sample the interviews and later make comparison of the collected data. There by applying the constant comparative method of data analysis. It also gives me the possibility to jot down memos about the camps during my visits and at times I used a video camera, which helps to shape my work.

As already mentioned above, the method used to collect my data is developed from structured questionnaires, informal interviews and qualitative interviews. The main aim of this form of interviews was to gather as much information and understanding as possible, without losing the focus of the subject. Qualitative interviews allowed individuals to elaborate on their responses to the various questions and with possible examples. The intention of the work was to address the camps, human rights issues, analyse the conditions of the asylum seekers, and expose the vulnerability of the asylum seekers in the society when excluded. It is also to come close to the problems of the existence of camps or closely related to the phenomenon being researched. Due to the use of the grounded theory, I have articulated my work and developed the form of narrative statement, visual picture, and a series of hypotheses. And have brought out the functions and structures of the different camps.

I have developed a particular procedure to accomplish my work. Mostly, I applied partly the strategy of Straus and Corbin who indicated a chronological approach to grounded theory studies. The broad explanation needed in my work could be converge by the use of grounded theory in order to capture the complexity of the camps, I used it to explain

the camps elaborately, the different structures and the action of people living in them. As such, it offers a social and critical analytical situation of the camps than a micro-analytic view. The grounded theory assisted me to explore the set up of camps and the various individuals living in them. I used it to explain my research process. And this helps in answering my research problems and questions making the work very lively because it involves all the individuals who are interacting in the camp life.

At a certain level of my work I was not able to identify the central questions but with the grounded theory, I developed the central questions that have assisted me in developing my theory on how I see the camp regime as an instrument of exclusion and externalisation. Thereby explaining a theory of a process. I went further in using the grounded theory in collecting data primarily through interviews with detainees and other individuals living in the camps who can really help me in developing my theory because they have a lot of experience in my research field and can express themselves very well. This theory makes me to always go to the field until I felt satisfied that my theme was saturated with materials. When I was in Libya and Ukraine, I was always on the field with released detainees since I could not visit the detention centre every day. In Germany, I am not only in the field always but working with asylum seekers, refugees and other migrants. With the grounded theory I am able to use the procedural stages pursued by Moustakas, that is the identifying of significant statements, short statements made by individuals that gives more meaning to my work. It has also assisted me to be able to reduce many important statements to meaning units of themes. In this occasion, I eliminated overlapping and superfluous statements and reunited them into small number of themes that emphasize on my main research topic. I am able to analyse the context, setting and the experiences of the individuals involved in my work and the other aspects. This is to give a vivid portray of the camp system as an instrument of exclusion and abuse of human rights.

As I used the grounded theory to examine all these individuals, I also applied the strategy of ethnography, to observe all the asylum seekers and detainees. This was because I was of the fact that it may be these individuals do not share patterns of behaviour because they do not interact on an ongoing basis. To study a group of persons with shared patterns of behaviour, one needs the ethnography approach. This made me to understand how people in a particular group create relationships, interact and act and how this constructs meanings in their life style. I wanted to understand how certain constructions are made either by those who obliged people to live in a defined

group or a group that develops naturally or by external influence. This is what the next section of ethnography entails.

2.2. The Ethnography

“As a process, ethnography involves extended observation of the group, typically through participant observation in which the researcher is immersed in the day-to-day lives of the people, or through one-on-one interviews with members of the group.”²⁵

Participatory observation has always been important because it makes researcher to be able to understand the social and natural world. Observations have always contributed as bedrock source of human knowledge. This has made many researchers like myself to travel and encounter direct experiences to interact with others through participant observation, interviewing and experimental design. This is part of my research strategy, to observe the asylum seekers, detainees, that is to have direct contacts with the subjects. I did not just pay particular attention to visual data gathering, but as Patricia A. Adler and Peter Adler put it:

“All of the senses can also be fully engaged in this endeavour, from smell to hearing, touch, and taste. Observation does consist of gathering impressions of the surrounding world through all relevant human faculties.”²⁶

In order to carry on my research, my first task was to select my setting. And this is Ukraine, Libya and Germany and as has been mentioned in my introduction, many reasons inspired me to choose these countries. Due to my choice, as will be described in the body of my work, access to some of my setting was not easy while in Germany it was difficult but not very difficult.

In order to prove the validity of my work, I have quoted many of the subjects that I interviewed. I have not just written as if I am the master of the information but make it clear that part of my information was got from the subjects. In this light, I am not making

²⁵ Creswell, John W. / Maietta Ray C.: Qualitative Research. In: Delbert C. / Miller Neil J. / Salkind J. (Eds.): Handbook of Research Design & Social Measurement. Thousand Oaks (CA)/ London/ New York: Sage, 6th edition, 2002, pp.143-197, p.158

²⁶ Adler, Patricia A./ Adler Peter: Observational Techniques. In: Denzin Norman K. / Lincoln Yvonne S. (Eds): Handbook of Qualitative Research. Thousand Oaks/ London: Sage 1994, pp. 377-392, p.378.

the subjects “victims” or objects. This is one of the reasons that I used the strategy of ethnography. There is also reliability in my work with the statistics that I bring out in the different countries. Without the statistics, the work will look as if it is a fiction.

2.3. Data Analysis

I used a questionnaire to collect my information. This questionnaire was divided into two main sections. One is the section concerning the asylum seekers, refugees and detainees and the other section concerned all the authorities having to do with asylum seekers, refugees and other migrants. This questionnaire is found at the appendix section of this thesis. The method on how I carried my research in the different camps is found at the section of the independent country. And a sample of my questionnaire is found at the Appendix of this work.

To analyse my data, I used the three phases of coding as stipulated by Strauss and Corbin (1990, 1998), these three phases are open coding, axial coding and selective coding. To code my data, I did it during the collection of the data which helped me to determine what data to follow. Typically, I began with the identification of open coding categories and I followed with the constant comparative approach to compare my data to incidents and incidents to categories until the categories were saturated. From open coding, I proceeded with axial coding and developed the coding paradigm. In this, I involved the process of selecting my core category and positioned at the centre of the axial coding process. From all these I started re-analysing my data to identify the several categories of information that relate to the core category like causal conditions, intervening and contextual categories, strategies, and consequences. Finally, I used the final stage of coding which is selective coding in which I started developing my theory or theme. I interrelated the categories in the coding paradigm, which includes refining axial coding, and presented it as a model.

3. Access to Field Location

3.1. Grassroots to Top Level Research

In the field I decided to adopt a research strategy that I personally qualify it as, “the grassroots to top level research strategy”. Using this strategy, I usually started my interviews with asylum seekers, refugees and other migrants. The reason behind this is that as a former asylum seeker many researchers used to come to us after having met with top-level officials. The top-level officials in most of the cases gave unverified information. In the field these researchers were usually confronted with a different

situation and usually made statements like, “I was told a different thing by the authority from what you are telling me and what I do experience.” With the grassroots to top level strategy, it is difficult for the top level officials to present unverified view points of the camp or any other situation of asylum seekers, refugees or migrants on the field. It also gives the researcher the chance to express his or her concern of what he or she observed to the top-level officials. That is not only researching but also passing information to those responsible so that they can identify some of the problems in the field they sometimes claim they do not know are existing because no body brought it to their knowledge. During my research in Ukraine, the UNHCR Regional Representative for Ukraine, the Republic of Belarus and the Republic of Moldova, Dr. Simone Wolke had to call on one of her colleagues by saying:

“Here is a researcher who has already been on the field and knows a lot of the camps and our clients.” After this exclamation, she accepted so many of the issues found in the field and had to pull out a draft the UNHCR Ukraine was working on for the Ukrainian government addressing some of the weaknesses and gave a copy to me. A draft I am still in possession of a copy. With the grassroots to top level, in most of the cases, one can carry issues as a researcher to the top level but the other way round is very difficult since seeing the top level is mostly by difficult appointments. The grassroots to top-level research method gives the researcher the possibility to dialogue with the authorities concerned and not just to ask “straight jacket questions” already prepared on a questionnaire.

In total, in my work, interviews were conducted in three different countries with asylum seekers, refugees and other migrants. The interviews were conducted in Germany, Libya and Ukraine, in camps and other settings. Interviews were also conducted with officials, humanitarian organisations and with the civil society like non-governmental organisations and journalists who made their own detailed analyses of the camp systems.

During the interviews, a structured questionnaire was used. This was used to collect data. I as the interviewer was guided by the responses from the interviewees. The interviews were done over four weeks of intensive work in each country, travelling to different private homes, asylum camps, detention centres and various offices. The questionnaire covered different areas of studies, for example, the camps, structures of the camps, functions of the camps, treatment of asylum seekers, level of education of

the asylum seekers, the responsibility of authorities over the asylum seekers and the problems faced by the asylum seekers. The works of other researchers were reviewed and integrated.

The questionnaire is divided into three parts: the part of the asylum seekers, the administrator of the asylum home and other authorities. This includes questions on personal experiences, relation between the people and what the law is all about. A hypothesis was developed to guide the interviews and to research into the works of other researchers. These hypotheses were formulated on the nexus that the asylum seekers who flee from their homes, their living conditions in camps out of Europe and within, especially in Germany, the law governing the asylum procedure and the law to provide services to the asylum seekers and the discretion of authorities in relation to these laws. More was as well concentrated on these new forms of camps found at the external borders of Europe and other regions of the world. Like in Ukraine and in Libya.

3.2. Ukraine

In this country to get into the detention centres is not very easy as well. This has made it difficult for many researchers to research into the camp system in Ukraine. One needs a special permission from the ministry of defence, which is usually not easy to have. I carried out research in this country for a month interviewing NGOs, detainees, former detainees and officials of UNHCR in Kiev.

In general, there is a very strict control at the Western part of Ukraine sharing borders with Slovakia and Poland. As I visited the area, almost every twenty minutes I was controlled with my translator since we were “foreign looking.” At one incident, as we entered a restaurant, we realised how border guards were hovering outside. Suddenly, a border guard popped into the restaurant when we were eating to inspect our documents. As the border guard went away, another one came and took us to the border guard station at Mokachevo where our documents were processed for about two hours. Though from the start it looked very difficult, I finally made my way through with the use of other unofficial means. The means made it possible for me to enter the camps for interviews and observation. Read more on the Ukraine section and Libya section. More of this information could be got at the section of Ukraine.

3.3. Libya

This is a very closed society. Although it has started opening up to human rights organisations, it still remains a closed country actually making it difficult for researchers to carry on empirical research and especially white researchers who could be identified from a distance. Apart from structures officially connected with the government, the Libyan government does not allow independent NGOs to be set up or a civil society, or charitable organisations. This makes empirical research very difficult since it is difficult to find partners on the field to gather information. And secret police officers are constantly following one.

As a Sub Saharan African and a black man I could at times disappear in the middle of other blacks since there are black Libyans and also other sub Saharan Africans living in the country. To conduct my research, it was a game of a lot of care and no hurry to outwit the Libyan security force. I should admit that it would be difficult for a white European to research in Libya since the attitude of the people in relation to Europeans is one of a lot of suspicion. One official told me “we do not want our country to be criticised by the European NGOs. A female researcher researching in the American University in Egypt wanted to go to Libya for her research on Forced Migration and Refugees Studies could not get a research visa. She has this to say,

“At the outset of the study, a research visa was envisaged. However, this proves not to be possible after my application for a visa was rejected by the Libyan authorities. The Libyan Embassy in Cairo said they were not given a reason for this rejection by the central authorities in Tripoli, where the decision is said to be taken.”²⁷

A white German researcher who is researching on Camps in Libya confirmed the fact that she could not go too deep in the society because she could be noticed five hundred metres away. She said:

²⁷ Hamood, Sarah: African Transit Migration Through Libya to Europe: The Human Cost. Cairo, Egypt: American University of Cairo, January 2006, p.9.

“An African and my self tried to go to the El-Fellah deportation prison in Tripoli but it was not possible. We rang the bell and the gate was opened but immediately the gate man saw a white European, he immediately shut the gate in front of us.”²⁸

3.4. Germany

In Germany, to access information is not impossible but at times very difficult. Not all the officials are willing to make an interview with a researcher even though Germany is considered a democratic country. In most of the asylum camps the officials usually refuse any interview with the excuse that the head of their organisations prohibited them from conducting interviews. This blocks the possibility of information distribution and the concrete manner some of the private organisations take care of these homes on how they operate. This was the case with the camp in Schönefeld where the authority completely refused to issue me an interview with the excuse that this can be done with permission from their superior in hierarchy. When asked where the office of the superior in hierarchy is found, they refused to inform me. Nevertheless, I got enough information from other asylum homes where the home administrators were always ready to talk to who ever come there. An example is the case of Perleberg and Walsiewaldorfs that has already been closed down and relocated to Garzau. It was also not a problem to get somebody from the ministry to talk to me on these issues.

In others, like in Rathenow, the house authority refuses the idea of researchers or journalists making pictures or filming the rooms even if the asylum seekers living in these camps give their consent.

3.5. Limitations

Despite the use of qualitative research, this work still has some limitations. Firstly, not all the target interviewees accepted to be interviewed. Some asylum camps administrators refused to grant interviews. The home administrators who refused to grant interviews said that the institutions in charge of the homes instructed them not to grant any interview. Secondly, this thesis is focused on the camp systems of Germany, Libya and Ukraine. Issues like how and why the asylum seekers entered are not explored in detail.

²⁸ “S.” is a German researcher who visited Libya, after her trip back we met on the 6th of November 2005 in the office of Forschungsgesellschaft Flucht und Migration (FFM) in Berlin where she explained her difficulties to me as a white person in Libya.

The researchers could not speak to some asylum seekers because of the language problems, for instance, with those from Bosnia, Bangladesh, Chechnya, Russia. The sample consisted of asylum seekers from different continent, Africa, Asia and Latin America. The age range was from 15 years and above. This was done in English, French, Spanish and German languages. For the Spanish-speaking asylum seekers, I sought the assistance of somebody who speaks Spanish to reach the Latin Americans. Due to language challenges, there were times when information was gathered from broken German and body language.

3.6. Advantages

An advantage that made this work to be so vivid is the fact that I have once been an asylum seeker in Rathenow, in the state of Brandenburg, in Germany. Due to this fact, many asylum seekers felt comfortable to make interviews with me without fears of betrayal. Many as one of them always see me. This gives them the confidence to talk to me without hiding many facts, as can be the case with somebody who does not understand certain aspects like the manner of dialoguing with asylum seekers. In Libya and in Ukraine I shared my stories with other asylum seekers and former detainees that encouraged them to speak out their minds and to bring me to their private homes. I made them to understand how rough an asylum seeker's situation in German can be. In some of the cases the interview became like a story telling event of different experiences an asylum seeker, a detainee, a migrant or a recognised refugee experiences.

Chapter II. European Policy on Camps

1. Background Knowledge of Camp System

Immigration, asylum and the exclusion and externalisation of asylum seekers, refugees and migrants from Europe have been a long standing European policy for the social and economic situation influencing the modernisation and industrialisation of the continent. Nowadays, due to many factors, migration has developed a broader spectrum and has created strong movements of people. With the increase of migration, different western governments are reinforcing their already existed stringent strategies to exclude and externalise migrants from European states by curbing or completely stopping migration and on the other hand, by externalising or extending the European borders beyond their original limits.

In order to realise the exclusion of asylum seekers, refugees and other migrants from Europe, European states have chosen to determine the types of migrants they need and usually, migrants that can lead to the development of Europe. In other words, the EU states have engaged in two main strategies to reduce or completely stop migration and these are, first, the control of migration which in other words means the use of pro-active measures to stop migrants and asylum seekers from making their way into the EU states and second, the management of migration which means selecting the migrants needed for the development of Europe, "Useful Migrants". That is why, in relation to Germany, Edmund Stoiber CSU said,

"Germany needs all the heads that can help our land and economy"²⁹ The European governments turn to demonise the "unuseful migrants". "Unuseful Migrants" is the terminology specifically referring to asylum seekers, refugees and other migrants by the EU state governments that they consider do not contribute to the development of Europe but on the contrary live on the social welfare of European countries. Due to the existence of the "Unwanted Migrants" the different EU states have developed stringent conditions to exclude asylum seekers, refugees though their lives are in danger of persecution in their different countries of origin. They do not need to come into Europe for security. One

²⁹ Heck, Gerda: Illegalisierung von Einwanderung. Einwanderungspolitik, Debatten und soziale Bewegungen in der Bundesrepublik Deutschland und in den USA. PhD Thesis, Erziehungswissenschaftliche Fakultät der Universität Köln 2005, p.127.

of these measures to exclude and externalise them is the creation of different forms of camps within and outside of the EU states.

In this section, I am going to elaborate on the theoretical and historical developments of camps. In course of the elaboration, more will be portrayed on how the idea to create camps as a tool to manage, exclude and isolate the “unwanted people” originated in the western democracy that has today become a reality and developing in different types of forms in the different countries where these camps are found.

1.1. Theoretical Development of Camps

For my theoretical analyses, I will concentrate on the category of Giorgio Agamben’s works. “Agamben”³⁰ is an Italian philosopher who has written much on the use of camps as an instrument to exclude and isolate its inhabitants in the Western democracies. This can be found in some of his works like *Homo Sacer*, where he states, where those in camps have been banned from the society. “He who has been banned is not, in fact, simply set outside of the law and made indifferent to it but rather abandoned by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable.”³¹ *And in State of Exception*, voluntary exception “has become one of the essential practices of contemporary states, including so-called democratic ones”.³² He defines camps in *Homo Sacer* “as the pure, absolute, and impassable bio political space (insofar as it is founded solely on the state of exception)-will appear as

³⁰ Agamben was born in 1942 in Rom, read law, literature and philosophy. He teaches philosophy and aesthetics in the universities of Venice and Marcerata. He is as well a visiting professor in the universities of Paris, Berkeley, Los-Angeles, and Irvine. He has written so many books and essays. His life and style are partly influenced by other important personalities-Hannah-Arendt, Michel Foucault, Walter Benjamin and Martin Heidegger. “He was recently honoured with the, Prix-Européen-de-l’Essai Charles-Veillon-2007. He had also been given a “Global Distinguished Professorship” at New York University (NYU), and a growing band of American admirers was eager to see him take his place on these shores. In January 2004, a few months before his New York course was to start, he published an editorial in the *Süddeutsche Zeitung* and in *Le Monde*, announcing his refusal to return to a United States that now required the electronic fingerprinting of foreign visitors at its airports. This fingerprinting, he said, was a further step of biopolitical domination close in spirit to the tattooing of prisoners in Auschwitz. In his self-exile, Agamben claims he has “hope” his decision will be shared by other European intellectuals and teachers.

³¹ Agamben, Giorgio: *Homo Sacer, Sovereign Power and Bare Life*. Stanford, California, USA, 1998, p.28.

³² Agamben, Giorgio *State of Exception*, Chicago, University of Chicago Press, USA, 2005, p.2.

the hidden paradigm of the political space of modernity, whose metamorphoses and disguises we will have to learn to recognize."³³

My choice of Agamben is due to the theme and style he writes on. That is the themes of camps and human rights. In order to elucidate on his school of thought, he opposes two lives and by the use of two Greek words; "zoe", which means "bare physiological life," and "bios", which means "form of life," and portraying how absolute power of the state reduces the rights of man from bio to zoe. Agamben is very concrete as he mentioned the refugee camps and military camps where those in these camps have lost their human rights. It is not that these people do not have rights but political authorities have confiscated their rights. Here Agamben demonstrates how sovereign power decides over the state of exception. Situations where some people are excluded because they are not citizens of a state. Agamben defends his theory by using the argument of Arendt Hanna who writes; "their plight is not that they are not equal before the law, but that no law exists for them;"³⁴

Meanwhile Wolf-Dieter Narr qualifies it as:

"The modern state and the society civilised by her and within her are constituted by borders, by social and political enclosures/ embedment and exclusion/ marginalisation. The citizens (from the late 19th and early 20th century on as well as the women became citizens) are restricted/limited/ from foreigners or aliens."³⁵

Agamben went as far as quoting Carl Schmitt who was a Nazis jurist. Who nevertheless could understand that the state of exception is an issue, which suspends the law for the absolute power to exist. The political juntas take over the state into hostage and no more the law. Given his acceptance of Schmitt's analysis of the camp as the product of the sovereign or absolute power, makes Agamben's evaluation of the camp as the main bio political paradigm of the West into a sovereign decision beyond the regulation of rule and order which is no more temporal but permanent. And which is not just historical but exist in contemporary democracies.

³³ Agamben 1998, p. 123.

³⁴ Arendt, Hannah: *The Origins of Totalitarianism*. San Diego, New York, 1951, p.293.

³⁵ Narr, Wolf-Dieter: *Kriminalpolitische Kategorie: Ausländer*. In: *vorgänge, Zeitschrift für Bürgerrechte und Gesellschaftspolitik*, Nr. 150, Heft 2, Juni 2000., p. 23.

In a series of research Giorgio Agamben theorises the origin of camps in Western democracy, portraying it from two perspectives,

“Today it is not the city but rather the camp that is the fundamental bio political paradigm of the West”³⁶ and “the hidden paradigm of the political space of modernity, whose metamorphoses and disguises we will have learn to recognize”³⁷. In Agamben's school of thought the camps are per se part of nowadays western democracy. To carry on some studies of the juridical and political structure of the camp “will lead us to regard the camp, not as a historical fact and an anomaly belonging to the past (even if still verifiable) but in some way as the hidden matrix and nomos of the political space in which we are still living.”³⁸.

The state of Exception is about the suspension of the rule of law, the emergence of a permanent state of siege, a situation where the authorities turn to abuse the law, and a generalized method to restrict freedom in Western democracies. This state of exception was supposed to be temporal but has come to stay. A strategy where some people are place outside the law and depoliticised.

“The camp is the space that is opened when the state of exception becomes the rule. In the camp, the state of exception which essentially a temporary suspension of the rule of law on the basis of factual state of danger is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order.”³⁹

³⁶ Agamben 1998, p. 181.

³⁷ Agamben 1998, p. 123.

³⁸ Agamben 1998, p. 166.

³⁹ Agamben 1998, p. 168-169.

To reinforce his criticism on camps, Agamben uses the works of Francois Quesnay⁴⁰ and Targot⁴¹ because the securitisation strategy does not help in solving other problems but on the contrary creates them; in an interview with Raulff, Agamben said;

“For Quesnay, Targot and the other physiocratic politicians, security did not mean the prevention of famines and catastrophes, but meant allowing them to happen and then being able to orientate them in a profitable direction...that is the termini of the double structure to reign and to govern”⁴²

The western democracies use the camps to build a culture of fear in the people in which they portray those living in the camps to be criminals even if they have not committed any crime. With this, the politics of exclusion is supported by a majority of the population seeking security in their society. This strategy has helped in developing clichés and stereotypes in the society since those in camps are seen as criminals, exploiters of European social welfare system and usurpers of jobs from Europeans.

The camp as an exceptional space is portrayed as found both inside and outside the nation. It is at the same time excluded from and found on a part of the national territory of the state by its inscription within the very juridico- politico structures that enacts its exclusion. Agamben qualifies it as:

⁴⁰ François Quesnay was the leading figure of the Physiocrats, generally considered to be the first school of economic thinking. The name "Physiocrat" derives from the Greek words *phýsis*, meaning nature, and *krátos*, meaning power. The Physiocrats believed that an economy's power derived from its agricultural sector. They wanted the government of Louis XV, who ruled France from 1715 to 1774, to deregulate and reduce taxes on French agriculture so that poor France could emulate wealthier Britain, which had a relatively laissez-faire policy. Indeed, Quesnay was the person who coined the term "laissez-faire, laissez-passer." Quesnay himself did not publish until the age of sixty. His first work appeared only as encyclopaedia articles in 1756 and 1757. This information is accessed from the website, The Library of Economics and Liberty, by Liberty Fund Inc., Landsburg Lauren F. / Roberts Russell (Eds.), Indianapolis, USA. Online: <http://www.econlib.org/library/Enc/bios/Quesnay.htm> accessed on the 1st of October 2007.

⁴¹ For Quesnay, Targot and the other physiocratic politicians, security did not mean the prevention of famines and catastrophes, but meant allowing them to happen and then being able to orientate them in a profitable direction. This is got from:

Raulff, Ulrich: Interview with Giorgio Agamben – Life, A Work of Art Without an Author: The State of Exception, the Administration of Disorder and Private Life, Rome 4. March 2004. Originally published in German by the *Süddeutsche Zeitung* on 6 April 2004. In: German Law Journal Vol. 5, No. 5, 1 May 2004. Online: <http://www.germanlawjournal.com/print.php?id=437> , accessed on the 1st of October 2007.

⁴² Raulff 2004.

“The camp as dislocating localisation is the hidden matrix of the politics in which we are still living, and it is this structure of the camp which we must learn to recognise in all its metamorphoses into the zones d’attentes of our airports and certain outskirts of our cities. The camp is the fourth inseparable element that has now added itself to and so broken- the old trinity composed of the state, the nation (birth), and land.”⁴³

Agamben traces and brings forward the European objective of the origin of the twentieth-century European concentration camp in Spanish “Campos de concentraciones”⁴⁴ created by Spain in Cuba to “suppress the popular insurrection of the colony”⁴⁵ and British “concentration camps”⁴⁶, “into which the English herded the Boers towards the start of the century”⁴⁷

These two camps came up as a result to the state of exception that is linked to the colonial war. Again, Agamben paints a picture of the origin of this genealogy with an implicit racial/ethnic difference in the interned population, on the basis of 'national security' independently of any criminal behaviour of living or detained in these camps. The camps were created with the justification of 'national security', a justification that legitimised the institution of the first concentration camps in Germany in 1923 by a Social-Democratic government not by the Nazi regime “which interned thousands of communist militants”⁴⁸, declaring 'a state of siege or of exception and a corresponding suspension of the articles of the German constitution that guaranteed personal liberties’⁴⁹. The origin of camps in recent times signifies political decisions to create a political space as part of modernity or recent democracy used by the nation to protect its biological life, which is seen as one of the main functions of the state. Agamben describes this as:

“...The birth of the camp in our time appears as an event which decisively signals the political space of modernity itself. It is produced at the point at which the political system

⁴³ Agamben 1998, pp. 175-176.

⁴⁴ Agamben 1998, p. 166.

⁴⁵ Agamben 1998, p. 166.

⁴⁶ Agamben 1998, p. 166.

⁴⁷ Agamben 1998, p. 166.

⁴⁸ Agamben 1998, p. 167.

⁴⁹ Agamben 1998, p. 167.

of the modern nation-state (which was founded on the functional nexus between a determinate localization (land) and a determinate order (state) and mediated by automatic rules for the inscription of life (birth or the nation) enters into a lasting crisis, and the state decides to assume directly the care of the nation's biological life as one of its proper tasks. If the structure of the nation-state is, in other words, defined by the three elements of land, order birth, the rupture of the old nomos is produced...in the point marking the inscription of bare life (the birth which thus becomes nation) within two of them. Some can no longer function within the traditional mechanisms that regulated this inscription, and the camp is the new, hidden regulator of the inscription of life in the order- or rather the sign of the system's inability to function without being transformed in to a lethal machine."⁵⁰

Agamben's school of thought sees the detainees in camps to have no claim in the state or nation in which they find themselves but are strongly controlled and they do not benefit from the law. Reverting to this, the camp is thus considered as a space of no contrast between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective rights and juridical protection no longer made any sense.

In this situation of being within and at the same time not benefiting in the laws and other advantages of the state because one is not a citizen is originating from the state of exception. In the state of exception, Agamben portrays the fact that the difference between private and public rights have been uplifted and the individuals in the camps are human beings and not citizens even if their human rights have been confiscated by the state because they are not citizens. This can be compared to the situation of the Jews and Sinti and Romas who were considered as outcast during the Third Reich or the stateless refugees in Germany.

These individuals, no longer considered part of the state are composed of the crisis of the state. In this situation, the refugees and stateless people are considered as people who have got no place in the state because of the reason of 'national security' propagated by the state so they have to be excluded from the state and a space created for them in the camp which are found in the states and the new ones which are today found beyond the borders of EU states. The camp is therefore considered as a "space of

⁵⁰ Agamben 1998, pp. 174-175.

exception” within and without national space. This is the present situation the asylum seekers, migrants and refugees in Europe or those wanting to enter the EU states are facing in recent days.

The structure of the camp is a disrupting restriction that goes beyond the political system of the state. The camp is a space where the 'national' is placed in suspension. The camp is as well regarded as a space, where the category of "citizen" living in or detained become passive, and more to that it is a space where the rights of those living or detained in, become very restricted as compared to those of the citizens. The rights of those living in a camp is like the remains of the "citizen" which are tested and revealed in lethal form. The figure of the refugee or "stateless" individual in the camp exposes the importance of "the human" and its rights once striped of the rights it bears as a citizen. This has made Agamben to emphasize that:

“Only because the camps constitute a space of exception in the sense we have examined- in which not only is law completely suspended but fact and law are completely confused- is everything in the camp truly possible.”⁵¹

According to Agamben, the importance of state power in instrumentalising the camps is its ability to exclude rendering certain people “bare” and “sacred” lives. Here he says humanitarian efforts to correct these weaknesses of the state has fallen short because the humanitarian organisations do not intervene in the problem of bare life but on the contrary encourage the state of exception which renders the non-citizen into a sacrificial figure. He states:

“In the final analysis, however, humanitarian organisations- which today are more and more supported by international commissions- can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight.”⁵²

To take a look at the school of thought of Agamben, the efforts of human rights tandem in rendering refugees or the individual in the camp without rights of the citizens but on the contrary into a figure of bare or naked life-nuda vita. In this light, Agamben sees the

⁵¹ Agamben 1998, p. 170.

⁵² Agamben 1998, p. 133.

nation- state as an instrument that functions as a machinery to exclude and oppress the refugees.

Agamben is linking the past to the future. In his school of thought, it is made mention that the camp system which was instituted to be a temporary issue, has today become a permanent structure that the western democracy uses as an instrument to govern. Camps have become a space where “unwanted people” of the society have to live. The asylum seekers, refugees or detainees are objects of the bio- politics of the excessive power of the state without any life and political existence. The state uses them as objects to play their politics. They are political baits, that most politicians always attack or use for their political goals without these group of people having the possibility to defend themselves. A permanent strategy in Europe where the European Union states make their citizens to believe that the economic problems in Europe are caused by asylum seekers, refugees and migrants. All sorts of attacks are levied on them, as camps inhabitants who could not respond. In this situation, it is logical to say that the asylum seekers, refugees and migrants are good paradigms to show the sovereign power of the states and its bio-political machines to produce the bare lives of the asylum seekers and refugees.

The camps are reappearing in different forms in an even more extreme form to reinforce the European identity from Agamben’s school of thought. This creates a critical perspective to the socio-cultural aspects of the European Union states enlargement process to Eastern Europe. And at the same time instituting camps to stop other ethnic or regional or territorial arrivals; “a redefinition of the old political system according to new ethnic and territorial arrangements, which is to say, a simple repetition of processes that led to the constitution of the European nation-states.”⁵³ This strategy creates links of the European integration and enlargement to cultural identity.

The camp is an instrument to manage and reinstate national security. Agamben criticises the strategy of governing through management with the belief of security. This can be seen in camp structures in which the daily life of asylum seekers and detainees are constantly under management in the name of security. The point that the state uses

⁵³ Agamben 1998, p.176.

sovereign power⁵⁴ that goes beyond the law and at the same time is the state above the law. The institution of camps like the camps to accommodate or detain asylum seekers, refugees and other migrants become the governing order. At this level, states see themselves in danger and have to react in developing defensive mechanisms. As an argument to the prevailing insecurity, states have to institute camps to curb the danger, cage the asylum seekers who are considered as potential danger. Asylum seekers, refugees and migrants are portrayed as unholy and inferior. The private lives of asylum seekers in camps are controlled every day even in countries where privacy was supposed to be maintained. If one takes a look of the multitude of organisations and laws in the EU states clamouring for the defence of privacy of the citizens, one begins to wonder why this attention is not included on those living in camps. This government policy of law and lack of law is a governance of double-structure. In asylum camps, the people are commanded and not administered. The rule by law is declining drastically in relation to asylum seekers.

The limited existence of “human rights” beyond citizen's rights in the nation- state today can be seen in the new category of stateless person and refugees revealed to the world in the different types of camps. To make strong analyses of the camp system in recent day, the camp as a space of exception has taken a new universal dimension in the post-September 11 world. This has again resulted to the U.S military base at Guantánamo Bay, Cuba. According to Agamben, “the detention camp at Guantánamo is the locus par excellence of this impossibility”⁵⁵. This is a signal to manifest the continuation of the war without end in Afghanistan where the detainee’s status is not precise. The prisoners of Guantánamo camp living conditions are compared to those in the Nazi camps because they do not have any legal status. “The detainees of Guantanamo do not have the status of Prisoners of War, they have absolutely no legal status”⁵⁶. They are detained because of the excess power executed by the USA. In this, one can say they do not have any legal existence.

⁵⁴ Sovereign power is the excessive power used by the state to institute the state of emergency or exception. During the state of emergency, democratic laws are uplifted.

⁵⁵ Raulff 2004.

⁵⁶ Raulff 2004.

The state of emergency or exception has been broadening in the world of today. The Guantánamo camp where suspected terrorists are being kept because they are considered to be dangerous to the world was once a camp for asylum seekers, refugees and other migrants between 1994 and 1995 from Haiti detained by the United States of American Government to prevent them entering the US. At the time, they were considered as a danger to the USA. And more specifically, at that very period, the USA was carrying on a military intervention in Haiti. The issue of security concerns just internal security of the Europeans and the Americans but not of other countries or continent. America and Europe use the ideology of security to further their bio-politics. The camp system has been widened in Europe and out of Europe by the EU states. The world is today living in a permanent state of exception due the polarisation of camps by the EU states.

With the theoretical analyses of Agamben of the camp system that has become a ruling strategy of the West I will retrace the historical origin of the camps and its evolution to contemporary day. The main purpose of this is to justify the fact that the use of the camp system is not a mistake but an intentional act of the EU governments to exclude and externalise the unwanted people from the society. In order to do this, the EU states and other western governments are conscious of the structure and functions of the camps.

1.2. Historical Overview of the Camp systems

One can trace the existence of camps in European history far back into the colonial era. European countries used the camp system as an instrument to dehumanise, suppress and institute other forms of exclusionary mechanisms. The colonial camps were created as a living space for “war criminals”. These “war criminals” were freedom fighters against colonisation. Examples of some of these camps were the Spanish “Campos de concentraciones”⁵⁷ in Cuba in 1895, the British concentration camp in South Africa for the Boer civilians in 1899 to 1902, the German “Konzentrationslager”⁵⁸ in Namibia, from 1904 to 1908, the Italian “accampamenti” or “campo concentramento”⁵⁹, 1932. These

⁵⁷ Agamben 1998, p. 166.

⁵⁸ Gewalt, Jan– Bart: *Herero Heroes, A Socio-Political History of the Herero of Namibia 1890-1923*. Oxford 1999, p. 186.

⁵⁹ Dietrich, Helmut: *Koloniale Lagergeschichte in Lybien*. In: *Forschungsgesellschaft Flucht und Migration / Niedersächsischer Flüchtlingsrat e.V. / Komitee für Grundrechte und Demokratie (Eds.): AusgeLAGERt. Exterritoriale Lager und der EU-Aufmarsch an den Mittelmeergrenzen*. Berlin, Hamburg 2005, p. 100.

camps were constructed to incarcerate people not because they have committed a crime but because of whom they were.

The prime motives of the colonial concentration camps were to exclude and concentrate the inhabitants from the society. Though there were no intention to extinct the camp dwellers in the colonial camps in Namibia, there were so many people who were selected by the German colonists and executed by hanging and many others died in the camps because of the very bad conditions prevailing. The colonial camps legitimated the creation of another extreme form of camps, the Nazi concentration camps and later became camps of extermination by the German Nazi government. Though the harsh conditions of the Nazi camps of extermination were completely different from those of the colonial concentration camps, the colonial camps gave the legitimacy to the Nazi regime to establish camps to exclude, concentrate and extinct its inhabitants.

But how did the word concentration camps and the whole concept of the camp system originate? In 1895 Spain, in order to have access to the land of the Cuban peasants, the process of “reconcentración” started. That means taking these people from their farms and concentrating them in camps somewhere else. The main intention was to deprive the “anti colonial freedom fighters” of food, shelter and other forms of support in order to weaken their strength to resist the colonists and stop their uprising. In so doing, the Cuban peasants were completely cut off and excluded from the rest of the society into concentration camps. The uprising of the Cuban peasants against the Spanish colonist and the relocation of the freedom fighters into concentration camps to isolate them gave birth to the word reconcentración camps. By 1900, this Spanish word reconcentración:

“Had already been translated into English, and was used to describe a similar British project, initiated for similar reasons, during the Boer War in South Africa: Boer civilians were “concentrated” into camps, in order to deprive Boer combatants of shelter and support.”⁶⁰

In 1904, the Germans copied the English model of concentration camp and first used the word concentration camp “Konzentrationslager” in the German language in relation to the camps in Namibia where the Hereros were concentrated into different camps in

⁶⁰ This information was got from this website <http://clublet.com/why?ConcentrationCamp> edit by Richard Drake. 10 March 2006, accessed on the 1st of November 2007

different cities and were obliged to do forced labour for German companies, individuals and the government. The concentration camps originated in Namibia after the extermination order (Vernichtungsbefehl) of Lothar von Trotha as the German Reichskanzler asked the missionaries to encourage the Hereros to give up the uprising against colonialism and that those who surrendered were; “to be placed in concentration camps (Konzentrationslagern) in various parts of the country where, under guards, they could then be used for labour.”⁶¹

With the declaration of the German Reichskanzler to describe the colonial concentration camps of Namibia, the word concentration camps were commonly used in Germany to describe other future camps.

I am going to demonstrate the functions and structures of one of these different colonial concentration camps as a paradigm of other European colonial camps, how it later legitimated the creation of the German Nazi camps of extermination. I still emphasize that first, the conditions of these different colonial concentration camps could not be compared with the extreme conditions of the German Nazi camps of extermination and second, the colonial concentration camps were never made to exterminate but to concentrate and exclude “unwanted People” from the society.

In order to concentrate and exclude the “unwanted people”, these colonised people were packed full in camps more than the capacity the camps could accommodate. During the colonial period up to recent days, all these camps have been setting up certain standards or rules of behaviour, which must be followed in relation to the way the founders expected. The laws set up in these camps were usually not legal but a threat to the use of force against those living in and out of them. Until date, anybody who does not respect the laws instituted in these camps is seriously punished. More to that there were a lot of similarities in the structure and manner these different camps function.

I will use the German concentration camps in Namibia as a paradigm because there are so many similarities in the general functions and structures with other colonial camps. These similarities legitimated the creation of the German refugee camp in Cottbus-Sielow, in 1923 to host Eastern European refugees in Germany. And later the concentration and extinction camps in Germany and in Poland.

⁶¹ Gewald 1999, p. 186.

Important reasons for the creation of colonial camps were fuelled by the search for a healthy economy for the European powers in the different colonies, the intention of enriching the mother country, the search for political power and to spread the different European cultures. As the European colonists met resistance from the colonised people fighting for their freedom and independence, the Europeans used every means necessary and quelled the uprisings and isolated these people from the rest of the population by forcing them into camps that were poorly constructed and in very bad conditions to do forced labour. These freedom fighters, who fought against being brutally occupied and exploited by the European colonialists and colonists, were branded rebels, terrorists, and a necessary danger to the colonists.

In order to continue with colonisation, the Europeans used the search for security to promote the camp system. To the EU governments, security has always been an issue for the Europeans. Western governments have hardly captured in their minds that security is an issue for all. In order to search for security, the Europeans always create insecurity somewhere else. The colonists used brute force to enter other countries in search of labour, raw materials and to spread their cultures. Parallel to the instigation of insecurity in these countries, they imposed measures to create security in their countries and around their citizens where ever they are found. This issue of security was to protect the German colonial soldiers as well as to manage and control the daily lives of the freedom fighters so that they could not regroup them selves again and launch another struggle for independence. As the German General Lothar von Throta in the colonial era in Namibia puts it in his diary:

“I find it most appropriate that the nation perishes instead of infecting our soldiers and diminishing their supplies of water and food... They have to perish in the Sandveld or try to cross the Bechuanaland border.”⁶²

With such declaration, the Namibians who were brought in the concentration camps died in their numbers. “From the time laps from October 1904 to March 1907, extensive reports put the death toll to about 15000 heads of Hereros and about 2000 heads of healthy Hottentoten of 7682, also 45,2 percent of the total deaths of the prisoners. From

⁶² Gewald 1999, p. 173.

there, the treatment of the war criminals in the camps can be considered as a strict application of the instituted extermination politics of General Lothar von Trotha⁶³

The deaths of the Hereros in Namibia went unnoticed to the Germans and other Europeans until the 100 year celebration of the extinction of the Hereros that “the minister of development, Heidemarie Wiecek-Zeul (SPD) during one of her African tours apologised for the colonial crime of Germany” she said, “For about one hundred years did the suppressor- blinded by the colonial mania-in the name of Germany transmitted violence, discrimination, racism and extermination”⁶⁴

The colonists constructed racist prejudice that colonial camps were used as a space to keep those affected with diseases from the different uprisings so that they could not contaminate the Germans and other Europeans. This ideology reconstructed the racist prejudice that those in camps were bearers of different forms of diseases that should be excluded from the rest of the society. The colonists used excessive power to force these people to live in these camps and turned them into forced labourers in order to alleviate shortage of labour. Those living in the camps did not have any rights to refuse doing forced labour or defend themselves from the accusation levied on them by the German government because the German colonists declared a state of emergency that confiscated the rights of the camp dwellers and brought them to a level where they could only do what the state wanted. In this era, there was the shortage of labour so; “between 1904 and 1908, Herero, who were captured by German forces were incarcerated in forced labour camps across the country and made to work on civilian and military projects”⁶⁵

The colonial camp system facilitated the task for the colonists to command and dominate the colonised people in and out of the concentration camps to the direction they wanted. This made the colonists to force their religion on the camp dwellers. This spread of their religion and other cultural values was very easy because the camp dwellers had no other

⁶³ Zeller, Joachim: „Ombepera i koza- Die Kälte tötet mich“. Zur Geschichte des Konzentrationslagers in Swakopmund (1904-1908). In: Zimmerer Jürgen / Zeller Joachim (Eds.): Völkermord in Deutsch-Südwestafrika, Der Kolonialkrieg (1904-1908) in Namibia und seine Folgen. Berlin 2003, p. 76.

⁶⁴ Frankfurter Rundschau, No. 231, 05.October 2005, D/H/R/S, p. 28.

⁶⁵ Gewalt 1999, p. 185.

option than to accept. This facilitated the spread of Christianity on the desperate people in camps. As one missionary puts it;

“During the period of time that the camp existed, there was a movement of mass conversion among the Herero. Missionary Meier, who in May 1905 ministered to approximately 500 prisoners in Whindhoek, noted, “Never again, before or there after, have I had such attentive audiences, as specifically in those days.”

Missionaries reported consistently high attendances and a hunger on the part of the Herero for Christian Religious instruction...at the same time, on the part of the Catholic and Lutheran missionaries, a struggle for Herero souls developed. In their eagerness to guide converts to the true faith, the missionaries of the two denominations engaged in a long drawn-drawn-out struggle for a monopoly over the souls of the Herero. Eventually, following discussions between the missionaries and military authorities, a decision was reached whereby Herero Prisoners of Wars (POWs)⁶⁶ were to be divided equally between the two denominations. Where this was not possible, the Herero prisoners were to be ministered to by the two denominations on alternate Sundays.”⁶⁷

Due to the maltreatment from the colonial masters, the vast majority of those in camps turned to accept religious faith as a major source of support and inspiration to cope with their difficulties. They all turned to God to know more about God. They believed God is in control. But the Herero had the choice only between two main religious faiths. Those were the Catholic and Lutheran beliefs. These converts saw churches as a place where their desperation could be forgotten for a while. Another significant issue of these sufferings made the detainees to identify themselves with their religion. This gave them a spirit of identity as the Herero or Nama people in relation to the religion they accepted. This identity strengthened many of the concentration camp inhabitants during the colonial era. The reason is that they saw themselves as people of the very plight.

⁶⁶ The Herero POWs were the freedom fighters that were considered as war criminals. POW camps are the camps where war criminals were put into if captured.

⁶⁷ Gewald 1999, p. 196.

Colonial camps did not possess enough space for the detainees. "As the word concentration implies, thousands of people were cramped into small areas"⁶⁸. In Namibia, in the camp in Windhoek, about 5000 people were held in a very small space under very poor conditions in 1906. The huts and tents where these camp inhabitants were living were cramped together:

"In kraals, and there they lay, without blankets and some without clothing, in the tropical rain on the marsh like ground. Here, death reaped a harvest! It was a terrible misery with the people; they died in droves."⁶⁹

This horrible situation was further described as:

"Soon came so many transportation of war criminals. The very people were put behind a doubled barbed wire that surrounded the extensive land of the shipyard of the ports authorities. In wretched simple sack linen and were especially forced to live in plank houses. About 30 to 50 people without taken into consideration their sexes and ages. Very early in the mornings to late in the evenings during work days and as well as Sundays and public holidays under hard beatings with clubs from the raw overseer where they had to work until they are completely broken down."⁷⁰

Colonial camps were used as instruments of Sexual and Gender Based Violence. Women in these camps used to suffer from different types of sexual violence from other men and the German soldiers. German troops raped the desperate women in the camps and at times made use of sexual services offered. The women did not have a choice because of the brutality existing in these camps. Even the missionaries were unwilling to understand the sufferings and abuses that these women in such a degrading situation could be forced into sexual promiscuity. The missionary did not condemn the act of the German soldiers but on the contrary wrote a letter to denounce and criminalize the women. In the letter, it was stated that:

⁶⁸ Erichson, Casper W.: A Forgotten History. In: Mail & Guardian, Johannesburg 17 Aug 2001.
Online: www.preventgenocide.org/prevent/news-monitor/2001sept.htm, accessed on 09.08.2007.

Prevent Genocide International is a global education and action network established in 1998 with the purpose of bringing about the elimination of the crime of genocide.

⁶⁹ Gewalt 1999, p. 195.

⁷⁰ Zeller 2003, p. 76.

“... Was appalled by what you report on the disgusting activities of the Herero women of course one cannot really expect anything different from these people. Even if they have become Christians, we cannot allow ourselves to forget the deep immoral dirt out of which they have come, and again with our love and patience we must attempt to show them the disgusting and shameful (verderbliche und schändliche) aspects of their activities.”⁷¹

The missionaries created the discussion of “We” and “They” which strengthen the racist sentiments today in Europe. To the missionaries, all the Europeans were the good examples of love and patience that the Africans could not copy. The missionaries failed to see the deep immoral dirt of the extermination order of Lothar von Throta, the deep immoral dirt of selecting Africans and hanging, the deep immoral dirt of the German soldiers raping the Namibian women or the deep immoral dirt of the missionaries themselves, forcing their religion on the Namibians, splitting people with one belief to develop different beliefs.

The women were imposed upon to carry on medical check up because there was a wide spread of venereal diseases as an effort to reduce the spread of the diseases. Force was exerted on the women by the German military camp authorities to do the internal examination despite strong protest from the women and other people. These examinations hurt the dignity of the women and other Namibians.

“For many months periodical venereal disease examinations of the whole native population have been taking place. Without regards to the person’s age (small children excluded), on the grounds of police orders, the genitals and the activities (Wandels) of all natives are subjected to an investigation by a medical doctor in such a manner that the feelings of decency (Schamgefühl) of the people are most deeply hurt...However, the Wachtmeister told me: “I have no guilt, I only do what I have been ordered to do.”⁷²

Colonial camps incarcerated children and women and inflicted very hard times on them. The right of the child was not respected and children could not have certain rights, which are necessary for the up bringing of a child. Various military units to maintain and care for stock used children. And in course of the hard labour, the children and women were

⁷¹ Gewald 1999, p. 201.

⁷² Gewald 1999, p. 202.

seriously beaten. This was revealed in a newspaper article on September 28 1905, in the Cape Argus, titled "In German S.W. Africa: Further Startling Allegations: Horrible Cruelty." In this article, Percival Griffith, an accountant of profession who because of the difficult times, took up on transport work at Angra Pequena (Lüderitz), related what he experienced as follows:

"There are hundred of them, mostly women and children and a few old men...when they fall they are sjamboked⁷³ by the soldiers in charge of the gang, with full force, until they get up...On one occasion I saw a woman carrying a child of under a year old slung at her back, and with a heavy sack of grain of her...she fell. The corporal sjamboked her for certainly more than four minutes and sjamboked the baby as well...the woman struggled slowly to her feet, and went on with her load. She did not utter a sound the whole time, but the baby cried very hard."⁷⁴

Colonial camps were used to promote other forms of abuses, mistreatment and exploitation. The detainees did not use to have rest time. They worked through out the week without rest; injured detainees were forced to work. Maltreatment like continues beatings were part of the camp life as sjambok was thrown over the backs of detainees. The concentration camp at Shark Island found at the Coastal town of Lüderitz, on the far tip of the small Island, was an example of the maltreatment and beatings in the colonial camp system. This led to the death of many people until an unknown clerk declared that; "the Angel of Death" had come to Shark Island. Fred Cornell, who was in Lüderitz, at the era of the camp, a British aspirant diamond prospector wrote in relation to the conditions of the camp that;

"Cold-for the nights are often bitterly, cold there-hunger, thirst, exposure, disease and madness claimed scores of victims every day, and Cartloads of their bodies were

⁷³ Sjamboked was the very brutal and continues manner in which the German soldier used to beat the people in the camps. Even if somebody was short of energy, the person was brutally beaten in a manner that either he or she used the last energy to get up and walk or died on the spot.

⁷⁴ Cape Argus, 28. September 1905. In: Gewalt, Jan- Bart and Silvester, Jeremy (Eds): Words Cannot Be Found. German Colonial Rule in Namibia: An Annotated Report of the 1918 Blue Book. Leiden/ Bosten 2003.

Erichson 2001.

Erichson, Casper W.: Zwangsarbeit im Konzentrationslager auf der Haifischinsel. In: Zimmerer Jürgen / Zeller Joachim (Eds.): Völkermord in Deutsch-Südwestafrika, Der Kolonialkrieg (1904-1908) in Namibia und seine Folgen. Berlin, 1st ed., 2003, p. 81.

everyday carted over to the back beach, buried in a few inches of sand at low tide, and as the tide came in the bodies went out, food for the sharks.”⁷⁵

Colonial camps originated as instruments to confiscate the freedom of movement of those incarcerated in them. There was the free movement of goods produced by the detainees in these camps but the detainees themselves were not allowed to move. It shows how much interest the colonists had in enriching their countries than to promote human rights. According to the colonists and colonialists, human rights were not a question to the colonised people. Freedom of movement was possible to the missionaries but not for the colonised people in these camps in Namibia as other colonial camps. This lack of freedom of movement prevented the colonised people from sharing ideas and to develop independently. From morning to night every day, the detainees in the colonial camps were obliged to stay in these camps or be transported to the job sites of the colonists to do forced labour. The colonised people were forced to build railway lines where the colonists will easily transport the goods exploited to the metropolis. Goods that move freely without check but not the people.

The colonial camp was used as a structure to construct fear in all its inhabitants. The beatings and other forms of maltreatment frightened the colonised people to the extent that they thought they have committed certain crimes. In Namibia, the manner in which they were forced into the camps was full of a lot of authority and brutality. They have committed no crime than to struggle for independence. The fright in this camp was because of uncertainty of what was to happen with somebody the next day. They were badly maltreated and killed in the camps. These were strategies to discourage the freedom fighters from attempting any uprising against the colonists. In this regard, one is right to describe the camps as an instrument to institute torture and fears in a person to deter he or she from carrying on a particular activity. Another aspect that instilled fears in the detainees in the colonial camps of concentration was the barbed wires used around the camps. These wires prevented an escape and acted as a tool of imprisonment. This psychological warfare in the minds of the detainees frightened them to submission.

The Namibian colonial camps were used as instruments to promote poor health and unbalanced diet. The health situation in the colonial camps was of a rudimentary

⁷⁵ Erichson 2001.

standard. Though the detainees had to do hard work daily, there was no hospital or doctor who could actually take care when somebody was sick. This led to the death of many. This poor health infrastructure was worsened by the very poor and insufficient food that was given to the detainees daily. They were provided with a handful of rice after a very hard day labour. They never had a mixed diet that could provide them with enough energy to sustain them. The returning Ovambo said: “ that the Herero are involved in work and that many of them are dying, that they only get rice as food and that they cannot endue this.”⁷⁶

The concentration camps of the colonists were used to construct the superiority of the white race over any other existing race. This could be seen in the Namibian colonial concentration camps where the German geneticist, Eugene Fischer, the teacher of Joseph Mengele, first carried on his racial medical experiment to prove his theories about the superiority of the white race. Fischer believed there existed genetic dangers from children born between whites and blacks. This brought him to Namibia, in the concentration camps to experiment. Finally, he published his book following his research, titled: “The Principles of Human Hereditary and Race Hygiene”. Fischer constructed his racist beliefs, an issue that became one of the main driving forces of Adolf Hitler and provided Adolf Hitler with a scientific justification of the superior race that led him to exterminate the Jews, blacks, Sinti and Roma, communists, mentally deranged people and homosexuals who were considered as prostitutes in the extermination camps in Poland. This racist purity theory of Hitler could be retraced to the colonial concentration camps in Namibia. In recent days, this racism is continuing in another form that leads to the exclusion of people into camps because they are described as “illegal migrants”. Though these people are not exterminated, they are concentrated and excluded from the society they find themselves. The Fortress Europe is in this process of dividing people in “Useful” and “Useless” migrants, in propagating “Asylum flow”. This so-called “Asylum flow” creates the continues belief of “Superior” and “Inferior” race.

The colonial camps did not have a good hygienic condition. In a situation where many people were packed full without good toilets, food and bathing facilities, the people were affected by different diseases and this increased the rate of death toll in the different

⁷⁶ Gewald 1999, p. 200.

camps. The situation in the camps needed an immediate improvement in order to reduce the death rate. As observed;

“The mass death rate within the Africans was in relation to the catastrophic hygienic conditions and the rampant illnesses, as Tuberculosis, Ruhr, scorbutic, typhoid, and fever, as well as heart and cardiac diseases.”⁷⁷

The European art of constructing, legalising and organising camps in recent times is to show the continuum of a system that was once used by colonists and totalitarian regimes in Europe. The main intention here is to portray that the use of camps is not limited to European historical policies or past but is as well a contemporary issue. The continuation of European camp policies in contemporary times has shown no shift of the EU governments' policy to dehumanise, exclude and externalise the unwanted people from their society. This dissertation is not to invoke the extermination policies of the autocratic regimes of Europe but to urge the awareness of the continuation of the European camp system as an instrument of dehumanisation, exclusion and externalisation of unwanted people in the 21st century. The continuum of the camp system in contemporary days carries along all the negative impact of the past or historical camps experiences by the Europeans.

Furthermore, this continuum portrays the injustice of the global refugee system, a system strongly denounced by the different EU governments. The EU's camp strategy has put the asylum seekers, refugees and migrants of contemporary time out of the ambit of justice. Different laws have been created by the states that contradict the laws guaranteeing the respect of human rights and dignity existing in the different states. For instance, in Germany, the Asylum Federal Act of 1993 “Asylbewerberleistungsgesetz”, amended in 1997 and 2007, has severely restricted the rights of asylum seekers in relation to their socio-economic aspects of life in Germany as compared to other citizens. “Access to medical and dental treatment during the first 36 months in Germany is restricted to cases of serious illness or acute pain”⁷⁸ This refusal to offer asylum seekers medical treatment is an abrogation of the German Constitutional rights which calls in its

⁷⁷ Zeller, Joachim 2003, p.69.

⁷⁸ Kopp Karl: Germany: Camps/ Accommodation on arrival. Published 25 June 2003, Sources: Danish Refugee Council - report, PRO ASYL and others.

Online: Migreurop <http://www.migreurop.org/article424.html?lang=en> accessed on the 08 of March 2008.

Article one that: “The dignity of a man/woman is inviolable.”⁷⁹ To elaborate on the 21st century types of camps, three different countries have been elaborately treated in this work-Ukraine, Libya and Germany.

With the theoretical background and development of camps, it is logical to follow up with the legal framework of how the EU states use different tools to control and exclude migrants from the territory. Most of these instruments went into force in disregard of effective judicial form and procedure. The main focus of the EU government is to strengthen the police in order to reach their motive to stop migration into EU states. This treaties and agreements were done in different countries. In some of them, the idea and reasons to develop the camps were discussed in details.

2. Legal Framework

Since the early eighties, EU states have embarked on different methods and treaties to harmonise migration into and out of Europe in order to create a common European asylum policy. The main reasons behind this harmonisation are to control, exclude and prevent immigration and to extend the European borders beyond its legitimate borders. This migratory policy is dominated by two factors of opposite backgrounds.

The first one is the growing concern about the “asylum flow.” Despite the fact that from statistics, the number of asylum applicants in EU states is dramatically decreasing, a great majority of politicians, civil society, media and policy makers strongly hold the view that asylum is being misused by “Economic Migrants” as an excuse to enter the EU states and this affect the labour markets and the EU social welfare system negatively.

The other reason is the aging population of most EU countries have created job opportunities for all classes of labour migrants due to the changing labour markets. These factors have made the EU states to sign many treaties to meet these objectives and some of the treaties are readmission treaties signed with other states surrounding the EU countries and other states found at different regions of the world. The reasons for these readmission treaties are to receive prospective asylum seekers, migrants and refugees deported from Europe or to stop those wishing to enter the European Union.

⁷⁹ Article 1 of the German Constitution

This has led to the creation of some sort of an external police force surrounding the EU states. It should be emphasised that this method of policing the EU frontiers are procedures that do not respect international treaties to manage and prevent migration. The methods do not guarantee the rights and freedom of other individuals. These non judicial methods to regulate, manage and to prevent migration could be seen in treaties and agreements like: Schengen treaty, London declaration, Europol, Fado, Eurodac, EU Strategic Paper, Amsterdam treaty and the Tampere treaty.

2.1. The Schengen Treaty, 14 July 1985

In July 1985, some European countries like Germany, France and Benelux states signed the Schengen declaration. In this declaration, the governments of these states accepted to create free movement of citizens within the Schengen states and at the same time strengthen the control mechanism of those wanting to enter the Schengen states. This led to the abolition of systematic border control between the participating countries According to Busch Nicolas:

“Schengen citizens shall be allowed to travel “without passport” from Finland to Portugal. However, most of Schengen cooperation has little to do with promoting free movement of persons, and much more with increased policing and control of people.”⁸⁰

Today the Schengen states are composed of, “Germany, Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia,

⁸⁰ Busch Nicolas: SCHENGEN. Secretive “Sirenes”: Maintaining public order and state security. In: Fortress Europe? Circular Letter No. 49, December 1996/ January 1997, p. 4.

Sources: SIRENE Manual, Brussels, 28.03.1994, SCH/OR.SIS-SIRENE (92) 26, 9 rev., 7 corr, confidential. The Schengen Information System and its implementation in Belgium, report by the Belgian SIRENE office, December 1994. Schengen Implementing Convention, 19.06.1990. List of competent authorities with direct access to the data in the Schengen Information System, Comité d’orientation SIS, Brussels, 17.06.1994, SCH/OR.SIS (94) 18, 3 rev. Décision de l’Autorité de Contrôle Commune Provisoire: Fondement juridique des bureaux SIRENE et du Manuel SIRENE, Brussels, 22.02.1995, SCH/Aut-contr (94) déc. 3 rev. The Europol Computer System and Draft of the additional budget for 1996 for the post-Convention phase of Europol, report to the JHA Council, 12869/95, agreed on 26-27.02.1996.

Slovenia, Spain and Sweden have acceded to the Schengen Agreement and are thus Schengen states.”⁸¹

Great Britain and Ireland are not signatories to the Schengen treaty or “official signatories to the Schengen treaty but have signed certain aspects in the treaty in which they will work together with the other members of the treaty, for instance, the Schengen Information System or the cooperation in criminal issues and the fight against drugs”⁸²

Some years after the Schengen declaration, the treaty went into force on the 19 of July 1996. This is known as The Schengen Implementing Convention (SIC). This Convention widens the powers of the police and reduced that of the judiciary. It is alleged that;

“The Schengen Implementing Convention of 1990 (SIC) provides for extensive police cooperation not only for the purpose of prosecuting crimes committed, but also for pro-active surveillance in the alleged interest of “public order and security” as well as “State Security”. This includes intelligence gathering and comprehensive automated data exchange on persons not suspected of any offence under criminal law.”⁸³

In the Schengen Implementing Convention, to assist member state and to exchange information will be one of its functions and this will be done through a central organ responsible for international police cooperation in each Schengen state, which will facilitate information circulation within the Schengen state and at the required time. This could be seen in some Articles of SIC.

Article 39.1 states that police authorities of the signatory countries “shall, in compliance with national legislation and within the limits of their responsibilities, assist each other for the purposes of preventing and dictating criminal offences, insofar as national law does not stipulate that the request is to be made to a judicial authorities and provided the request or the implementation there of those not involved in the application of coercive measures by the requested Contracting Party. This amounts to all but a blank check for the “police authorities”.

⁸¹ German Foreign Office: What countries are Schengen states?

Online: <http://www.aktion-europa.diplo.de/diplo/en/Infoservice/FAQ/VisumFuerD/15-Schengenstaaten.html>. 09.01.2006. Last updated 15.01.2008, accessed 15.02.2008.

⁸² Heck 2005, p. 60.

⁸³ Busch, Fortress Europe? CL No. 49. December 1996/ January 1997, p. 4.

Meanwhile Article 46 of SIC, stipulates that each contracting party (CP) may without being asked, send the contracting party concerned any information, which may be of interest to it in helping prevent future crime and to prevent offences against or threats to public order and security.

Schengen Information System (SIS) Article 93 of the SIC describes SIS as an instrument:

“To maintain public order and security, including state security” and to apply the rules of the SIC relating to the control of foreigners and the movement of persons on the Schengen territory.

This SIS is a joint computerised database used for fast information exchange between the police authorities of the Schengen states as well as for a criminal search database. The SIS has its head quarters in Strasburg and it is composed of France, Germany, Benelux, Austria, Italy, Portugal and Spain. The SIS is used as an instrument for secret surveillance and the storage of information of other people without their knowledge. This can be seen in Article 99.3 SIC, which says,

“At the request of the authorities responsible for state security”, reports on person may be stored in the SIS for the purpose of “discreet surveillance” or “specific checks” where “concrete evidence gives reasons to suppose” that the information thereby gained is “necessary for the prevention of a serious threat by the person concerned or other threats to internal or external State security.”⁸⁴

2.2. SIRENE Manual

Supplementary Information Request at the National Entry (SIRENE) could best be described as a complex, network-like structure for bilateral and multilateral police and security cooperation between the Schengen countries, including central national offices and a sophisticated computerised information system, enabling the exchange of “supplementary” data on persons and items prior to the entry of a report in the SIS, or following a hit (positive search) in the SIS.⁸⁵

⁸⁴ Busch, *Fortress Europe?* CL No. 49. December 1996/ January 1997, p. 5.

⁸⁵ Busch, *Fortress Europe?* CL No. 49. December 1996/ January 1997, p. 5.

SIRENE has got no legal base. During the creation of comprehensive rules by the Schengen about SIS, SIRENE was never mentioned. The Schengen countries concentrated more on information of individuals than on the legality of the instruments they use in searching and storing information. The Schengen countries Joint Supervisory Authority (ACC), addressed this lack of legality of SIRENE and in 1995, the ACC contacted the Schengen Central Group (the powerful body of senior officials preparing all decisions of the Schengen ministers), to “indicate the measures envisaged by the contracting parties as a whole or by each of them for giving a satisfactory legal basis to the competencies of these (SIRENE) offices.”⁸⁶.

2.3. The London Declaration

In December 1992, the ministers of interior of the EU states met in London to decide on a defined direction of steering the asylum politics. They came out with different proposals, decisions and Resolutions, which were not judicially binding, but they saw their work as relevant for the asylum politics in Europe. In the London declaration, it was decided that the discussion of “manifestly unfounded and abusive applications” for asylum should be discussed in the different EU states and be added to the law-governing asylum seeking in the different EU states. The elements to constitute a “manifestly unfounded and abusive” applications will be, if an applicant for asylum could be sent back to a “safe third country”, if the applicant comes from a “safe and secured country”, and if the applicant comes from a “unsafe country” but could be brought back in a safe environment around the unsafe country the applicant comes originally from.⁸⁷

2.4. Europol

This is a policy to develop a European police cooperation to fight crimes. It was said that there is a great development in the movement of criminals and criminal transactions in activities like terrorism, drug trafficking and money- laundering because of the abolition of the internal borders in the Schengen states. In 1995, Europol assumed the function to

⁸⁶ Busch, Fortress Europe? CL No. 49. December 1996/ January 1997, p. 5.

⁸⁷ Heck 2005, p. 106. And:

Kopp 2002, p. 54. And:

Busch, Nicolas: Ein „Raum der Freiheit, der Sicherheit und des Rechts“? Polizeiliche und justizielle Zusammenarbeit, Migrations- und Asylpolitik in der EU, Brussels 2001, p. 19. Online: www.pds-europa.de , accessed on 29. October 2007.

fight against “smuggling crimes”⁸⁸ And on the 1. Of July 1999 Europol assumed its full functions to combat:

“Drug-trafficking, smuggling of human beings, stolen vehicles, trafficking of human beings, (including the fight against child pornography), money laundering, illegal dealing with radio active and nuclear substances, terrorism and counterfeit of money.”⁸⁹

Europol can broaden its activities on other crimes; develop data file rules to determine the nature of data to be stored in the so-called Analysis Registers.

Europol Convention gives room for the collection of, processing and utilisation of personal data concerning one category of criminal suspect and four categories on non-suspects, all listed under Article 10.1 (1-5):

Suspected criminals and suspected future criminals; possible witnesses in future criminal proceedings; Victims or possible future victims;“ contacts and associates“; Possible informers.⁹⁰ According to the German Minister of the interior Wolfgang Schäuble “With the entry into force of the Protocols amending the Europol Convention we will be able to adjust Europol to modern law enforcement requirements and to noticeably increase its efficiency. We have also brought about political agreement regarding the incorporation of Europol into the EU’s legal framework. In this context, Europol’s mandate will be extended to cover all forms of serious cross-border crime.”⁹¹

2.5. EU Strategy Paper (Austrian Presidency)

A confidential “strategy paper” from the Austrian EU Presidency demanding the EU states to “show “political muscles” in preventing refugees and migrant fluxes...and

⁸⁸ Dietrich, Helmut: Die „unsichtbare Mauer“. Eine Skizze zu Sozialtechnik und Grenzregime. In: Dominik, Katja/ Jünemann; Marc/ Motte, Jan/ Reinecke, Astrid (eds.): Angeworben, eingewandert, abgeschoben. Ein anderer Blick auf die Einwanderungsgesellschaft Bundesrepublik Deutschland. Münster 1999, p. 318.

⁸⁹ Busch 2001, p. 46.

⁹⁰ Busch Nicolas: EUROPEAN UNION. Rules for Europol’s Analysis Files: Incongruous New Draft. In: Fortress Europe?-CL No. 41. February 1996, p. 1.

Sources: Proposal for rules applicable to analysis files, from the Council Presidency to the Europol Working Party, Brussels 4.1.1996, 4038/96, Limite, Europol 2 (23 p., in English). Staffan Dahllöf, journalist, Copenhagen

⁹¹ EU 2007.de. Press Releases: Home affairs ministers of Germany, Portugal and Slovenia: First leg of the trio presidency a great success. 26.06.2007. Online:

http://www.eu2007.de/en/News/Press_Releases/June/0626BMIBilanzTrio.html accessed on the 8th of April 2008.

enumerates possible foreign policy action ranging from economic pressure to military intervention against refugee generating states.⁹²

In the paper, Commissioner Padraig Flynn identified three key objectives of future EU policies in the field of asylum and migration: countering migratory pressure, ensuring effective control of immigration; and strengthening the position of legal immigrants. The strategy papers criticises the EU states by stating that none of these objectives laid down in 1994 have been achieved.

The EU has not really managed to influence sustain ably the reality of migration. Neither the potential to emigrate nor actual emigration from the main regions of origin has decreased in the past five years... Furthermore, neither the control activities at the external borders of Schengen and the Union nor the member States laws on aliens and asylum stop illegal migration... the proportion of illegal migrants has clearly increased.⁹³

The EU strategy paper outlined new strategy to combat asylum seekers and illegal immigration. It made mention of military intervention to prevent migration flows. It calls on the EU not to limit itself to political level only (point 53). Europe should act as a body and independently and not to oblige itself to other bodies. The strategy papers demands for direct influence and presence not only for the prevention and rapid containment of conflicts, but also for the restoration of normality, which makes it possible for displaced persons to return and stabilises regions in the longer term, (Point 55). The possibility of “voluntary repatriation” of third country nationals should be actively safeguarded, if necessary using the same means of force employed by the international community for maintaining peace and bringing conflict to an end.”⁹⁴

The strategy paper of the Austrian EU Presidency finally confirmed the fact that there is a “fortress Europe” principle. This paper proposes that “a model of Concentric Circles of migratory policy could replace “fortress Europe” in reducing migratory pressure, and more specifically, tightening border. Relating to this model, all States of the world would

⁹² Sources: Austrian Council Presidency to the K4 Committee: Strategy paper on immigration and asylum policy, 1.7.1998, 9809/98 CK4 27, ASIM 170, limite.

Second Draft, 29 September, 9809/1/98, Rev 1 Limite, CK4 27 ASIM 170. See also:

Busch, Fortress Europe? CL No. 56. December 1998, p. 1.

⁹³ Busch, Fortress Europe? CL No. 56. December 1998, p. 1.

⁹⁴ Busch, Fortress Europe? CL No. 56. December 1998, p. 2.

be assigned to one of four “concentric circles” constituting a sort of defence line- around a first (or inner) circle, formed by the EU Member states, capable of fulfilling Schengen standards of control and other countries which “do not cause emigration” but have become “target countries on account of their advanced economic and political situation” (points 60 and 116)⁹⁵

The second concentric circle is relating to countries, which were formerly emigration countries, but in recent days, they enjoy political and economic stability that has made the countries attractive to migrants. And these countries do not exercise stringent migration control. These are the “transit countries” used by migrants to enter EU states. These second circle related to be the neighbouring countries found at the external borders of the Schengen/EU states and “perhaps also the Mediterranean area”. These countries’ systems of control should gradually be brought into line with the first-circle standards (points 60 and 118).

The third “concentric circle” is relating to countries of emigration. That is the former Soviet Union, Turkey and North Africa. These countries are expected to step up primary checks and combating migrants using their territories to enter the EU states. These countries are playing the role of international police on the borders of the EU states.

The fourth (outer most) concentric circle is country of emigration considered to be beyond the reach of European “political Muscles”. These “the Middle East, China and “black Africa”. These countries to be encouraged to eliminate “push factors” of migration Points 60 and 119.⁹⁶

The EU Austrian Strategy Paper came up with the proposal of “New refugee protection” suggesting to shift from international Conventions and Treaties since the grounds for flights have changed. It is said that most flights are no more Convention but other factors have developed that are not covered by the Geneva Convention. In this respect, the strategy paper proposed to “supplement, amend or replace” the 1951 Geneva

⁹⁵ Busch, *Fortress Europe?* CL No. 56. December 1998, p. 2.

⁹⁶ Holzenberger, Mark/ Roth, Claudia: *Europäischer Flüchtlingsschutz heute*. In: Butterwegge, Christoph/ Hentges, Gudrun (eds.): *Zuwanderung im Zeichen der Globalisierung, Migrations-, Integrations- und Minderheitenpolitik*. Opladen 2000, p. 92. See also: Busch, *Fortress Europe?* CL No. 56. December 1998, p. 3.

Convention on refugees through a new Convention (point 103) and to consider a “new approach” to refugee protection.⁹⁷

2.6. FADO

Due to the fact that it was difficult to identify authentic and false documents, the Council of European Union came up with the creation of False and Authentic Documents (FADO). On the 3.12.1998, the central computer system was instituted with the aim to distribute information to the other EU states concerning authentic and falsified documents. This will lead to the acquisition of new techniques to identify falsified documents. The FADO gives the possibility to the different states to know different types of original documents in their original form and falsified documents. And these different documents are stored in the data bank of the EU states to render member states to use in case need be.

2.7. Eurodac

The Eurodac Convention was instituted to create a central computer system where the fingerprints of asylum seekers and “illegal immigrants” will be stored and immediately compared. According to Justice and Home Affairs JHA Council, it was agreed that Eurodac should be expanded to contain not only the fingerprints of all person seeking asylum in an EU Member state, but also of “illegal immigrants”, i.e. third country nationals who have entered the EU territory without sufficient travel documents or whose identity has not been established “beyond doubt”.⁹⁸

On the 26 of May 1999, the European Committee concluded the creation of a common computer system to create a fingerprints register known as Eurodac.⁹⁹

⁹⁷ Sources: Austrian Council Presidency to the K4 Committee: Strategy paper on immigration and asylum policy. 1.7.1998, 9809/98 CK4 27, ASIM 170, limite

Second Draft, 29 September, 9809/1/98, Rev 1 Limite, CK4 27 ASIM 170. See also:

Busch, Fortress Europe? CL No. 56. December 1998, p. 3.

⁹⁸ Busch, Fortress Europe? CL No. 56, December 1998, p.5.

⁹⁹ Münz, Rainer/ Ulrich, Ralf (eds): EU: EURODAC-Datei zum Vergleich von Fingerabdrücken Asylsuchende. In: Migration und Bevölkerung. Bevölkerungswissenschaft. Humboldt Universität Berlin. No. 05/99, Berlin 1999 http://www.migration-info.de/migration_und_bevoelkerung/archiv/ausgaben/ausgabe9905.pdf , accessed 08.04.2008, Also see: Heck 2005, p. 110.

In relation to the Dublin Convention and Eurodac, Germany claimed, the Dublin Convention cannot be effectively implemented if it's only the fingerprints of asylum seekers that are stored in Eurodac. It was accepted that the widening of draft convention to include not only asylum seekers but also other third country nationals.¹⁰⁰

In 2007, when Germany got the presidency of the European Union, the German minister of internal affairs, Wolfgang Schäuble declared; "...we have reached political agreement to transpose the Prüm Treaty into the legal framework of the EU. This means that in the future Member States will grant one another automated access to their DNA and fingerprint data and to vehicle registration databases..."¹⁰¹

2.8. Amsterdam Treaty

The Amsterdam treaty came into force in May 1999 as one of the instruments to control, manage and prevent migration into the EU states. The EU states are obliged until 2004 to decide on minimum standards on central aspects in the field of migration like registration of asylum seekers, rights of legal migrants and the fight against irregular migration.¹⁰²

This means that after a "transitional period" of five years. With the entry into force of the Amsterdam Treaty, the Council shall act unanimously and the commission and the member states share the right of proposal. The council shall consult the European Parliament (EP).¹⁰³

It was decided that the migration politics would be regulated in relation to the independent law of each state. This means that rulings of the European Court of Justice (ECJ), on the question on interpretation of the new Title or of acts of the Community

¹⁰⁰ Busch Nicolas: EUROPEAN UNION. Justice and Home Affairs Council of 19 March. In: Fortress Europe? CL No. 54, May 1998, p.2.

¹⁰¹ EU 2007.de. Press Releases: Home affairs ministers of Germany, Portugal and Slovenia: First leg of the trio presidency a great success. 26.06.2007. Online: http://www.eu2007.de/en/News/Press_Releases/June/0626BMIBilanzTrio.html accessed on the 8th of April 2008.

¹⁰² Busch 2001, p. 28. Also see: Heck 2005, p. 113.

¹⁰³ Busch Nicolas: ASYLUM/ IMMIGRATION, Fundamental Rights, Justice and Police, - An Overview of the Amsterdam Treaty. In: Fortress Europe? -CL No. 51, May/June 1997, p. 5.

institutions based on this title shall not apply to judgements of national courts against which there is no legal remedy.¹⁰⁴

The question of a European migration politics is out of topic except in the condition to obtain a visa into Europe. In this section it is argued that the Council shall adopt, within five years, a number of measures with direct legal in the member states in the fields covered by the new Title. But due to the requirement of unanimity, this is unlikely to lead to any major change. Exception to the requirement of unanimity is made only for certain measures in respect of visa policies.¹⁰⁵

2.9. Tampere European Council

In order to create an area of freedom, security and justice in the European Union, a special meeting was organised by the European Council on the 15 and 16 of October 1999 at Tampere. This meeting was designed "Tampere Milestones." This treaty reinforces full use of the political possibilities offered by the Treaty of Amsterdam. According to the Tampere meeting,

"The European Council will place and maintain this objective at the very top of the political agenda. It will keep under constant review progress made towards implementing the necessary measures and meetings, the deadlines set by the Treaty of Amsterdam, the Vienna Action Plan and the present conclusions. The Commission is invited to make a proposal for an appropriate scoreboard to that end. The European Council underlines the importance of ensuring the necessary transparency and of keeping the European Parliament regularly informed. It will hold a full debate assessing progress at its December meeting in 2001."¹⁰⁶

Asylum and migration was one of the main issues in the Tampere where it was agreed that a common EU policy will be developed in separate but closely issues of asylum and migration in order to develop a common EU strategy to create partnership with countries of origin. This is a thing that was strongly discussed in the Vienna Action Plan. In relation

¹⁰⁴ Busch, Fortress Europe? -CL No. 51, May/June 1997, p. 5.

¹⁰⁵ Busch, Fortress Europe? -CL No. 51, May/June 1997, p. 5.

¹⁰⁶ Decision reached in the Tampere European Council on the 15/16 October 1999. This could be seen in: http://www.europarl.europa.eu/summits/tam_en.htm this was accessed on the 19 of November 2007.

to this it will be easier to combat irregular migration and facilitate deportation. The creation of partnership is a strategy to reinforce the machinery of deportation and to stop the coming of migrants and asylum seekers in the EU territory.

In order to stop migration and asylum into the EU states, the Tampere meeting raised up the issue of capacity building as a strategy. It was discussed that:

“The European union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This require combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, a view to promoting co-development.”¹⁰⁷

In addition to the politics of no migration, no asylum seekers, the European Council congratulated the report of the High Level Working Group on Asylum and Migration set up by the Council and extended the mandate of the commission to draft further Action Plans. The Council found the first Action Plan of the commission as useful and invited the Council and Commission to report back on their implementation to the European Council in December 2002.

This Action Plan was to Morocco, Albania (and its neighbouring region), Somalia, Sri Lanka, Afghanistan and Iraq.

During the meeting, the members insisted to respect the right to seek asylum and to establish a common European Asylum System that will respect the Geneva Convention that is confirming the fact that nobody is returned when the life is in danger. In this case, respecting the principle of non-refoulement. In order to reinforce a perfect asylum System, there will be a clear refugee Determination Procedure to study asylum applications, “common standards for a fair and efficient asylum procedure, common

¹⁰⁷ Decision reached in the Tampere European Council on the 15/16 October 1999.

minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status.”¹⁰⁸

The Council stressed the need for measures to guarantee subsidiary protection to people in need of and to constantly consult the UNHCR and other international organisations. This paragraph is a logical part of the work of the Council in that it is going to deport irregular migrants and failed asylum seekers.

The Council stressed for the finalisation of the identification of asylum seekers in perfecting the Eurodac system.

For the management of migration at all stages, the Tampere meeting established many measures as strategies. There should be close cooperation with countries of origin and transit. There will be information channel on the different possibilities of legal migration and to prevent all forms of human trafficking. Stress was made on visa and false documents and the development of policy like closer cooperation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.

The European Council has decided to fight against “illegal immigration paying particular attention in combating traffickers in human beings and economic exploitation of migrants. It called for the adoption of legislation to inflict severe sanction against any body that carries on trafficking. The Council was called upon to adopt by the end of 2000, on the basis of a proposal by the commission, legislation to this end. Europol and member states were called upon to dismantle criminal networks involved in this domain. Meanwhile the victims of trafficking rights shall be secured paying particular attention to women and children.

The European Council appealed for tight cooperation and mutual technical assistance between the member states border control service, for instance for exchange programmes and technology transfer, laying emphasis on maritime borders, and for the rapid inclusion of the applicant states in this cooperation. The Council congratulated Italy and Greece due to the Memorandum of Understanding to enhance cooperation between the two countries in the Adriatic and Ionian seas to combat organised crime, smuggling and trafficking of persons.

¹⁰⁸ Decision reached in the Tampere European Council on the 15/16 October 1999.

The Schengen acquis was integrated into the Union. Due to this the members of the union who accepted the acquis must respect it fully and other measures attached on the acquis. There was an emphasis from the European Council on measures to effectuate effective control of the Union's future external borders by specialised trained professionals. Since then the EU states have been using different measures to reach this goal. Today, there is a joint force of the EU countries known as FRONTEX. FRONTEX is composed of police of the different E.U. countries found at the borders to prevent irregular entries.

As has been seen, all the EU countries are involved in the development of judicial means to stop the coming in of asylum seekers, refugees and other migrants into their independent countries. In some of the methods developed, it is totally illegitimate because they have taken powers from the hands of the judiciary and invested in the hands of the police. Thereby making Europe a police continent. On the other hand, they believe that when the EU states come together, they can define the direction the world is supposed to move without the contributions of other parts of the world. That notwithstanding will still not prevent asylum seekers, refugees and other migrants from coming into Europe. This has made the EU states to continue with other measures to tighten up their borders and that is the different forms of camp system. This camp system is in collaboration with a united police force intervening at the borders of different EU states to prohibit asylum seekers and refugees from coming into Europe by stopping and deporting them to their countries of origin or to these countries where these camps are found. This Rapid Intervention Teams (RABITs) is known as FRONTEX with head quarters at Warsaw, in Poland. I will give detail description and analysis on how the camp system functions.

Chapter III. The Concept of Transit Processing Centres and Regional Protection Areas

1. Introduction

As already stated above, spontaneous entries of migrants and asylum seekers to the EU states increased from 1974 to 1995. Many Convention and humanitarian factors contributed to obligate people leaving their home countries. Though these factors still exist, the numbers of asylum seekers and other migrants entering the EU states have drastically reduced from 1995 to recent date if compared with the numbers that came in between 1983 to 1993. There have always been insignificant increases and drops into Europe after 1993.

“Asylum applications to EU states grew from some 50,000 in 1983 to more than 684,000 in 1992. After 1993, as increasingly restrictive measures were adopted through out Western Europe, the numbers steadily declined, reaching about 276,000 in 1996. Since then, the total has slowly climbed again, reaching almost 381,600 in 2002-a level that is still only 56 per cent of the 1992 peak figure”¹⁰⁹

“The world population of immigrants increased at a rate of 2.8 million per year between 1985 and 1990 and more than 4 million per year between the break up of the Soviet Union and Yugoslavia added 20 million new international migrants to the world in 1991, as borders moved across people instead of people across borders.”¹¹⁰

A recent survey from the United Nations High Commissioners for Refugees (UNHCR), estimates 25,000.000 of “internally displaced persons”. Most of the nearly 20.000.000 asylum seekers reside in nearby countries.

In percentage, the Middle East 46%, Africa 20%, South and Central Asia 18%. Relatively, few of those fleeing from persecution are found in Europe, 6.5%, meanwhile,

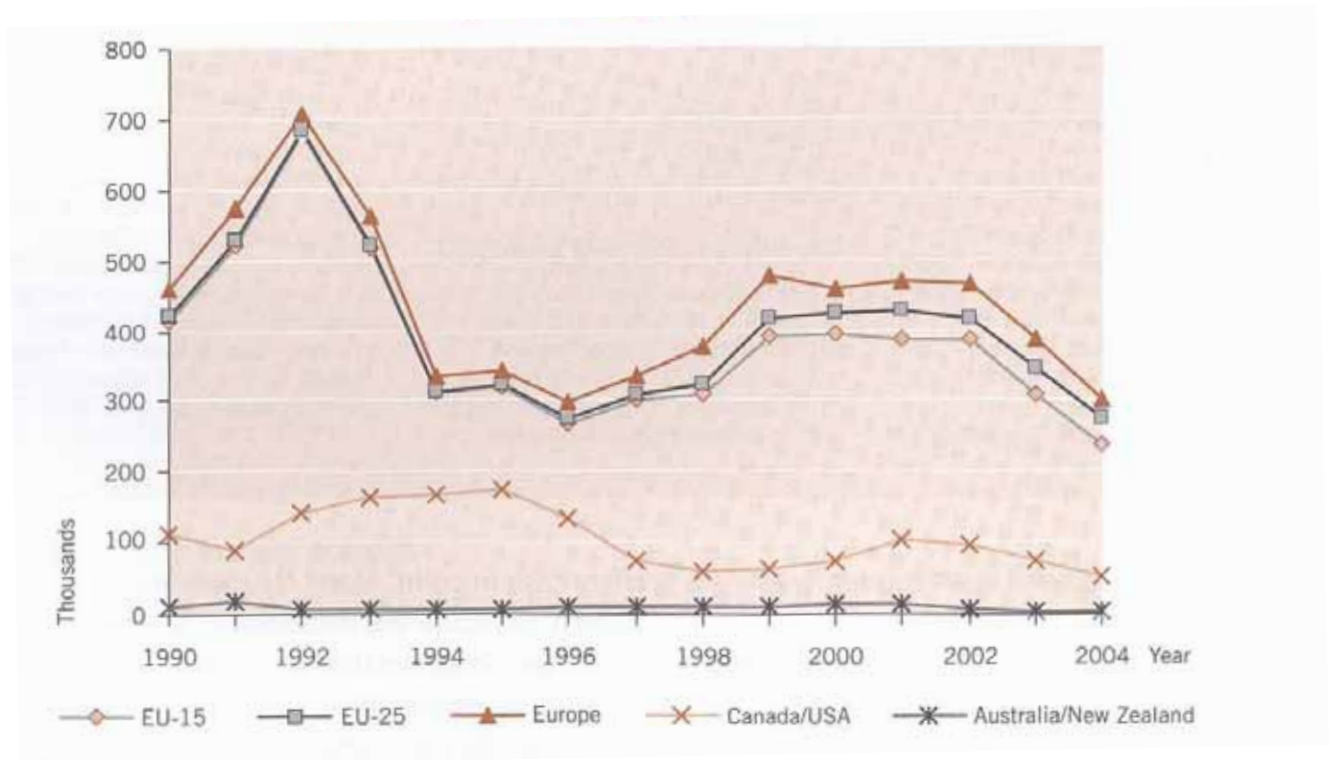
¹⁰⁹ Loescher, Gil and Milner, James: *The Missing Link, The need for Comprehensive Engagement in Regions of Refugees Origin*. In: *International Affairs*, Vol 79, 2003, pp. 583-617.

¹¹⁰ Massey, Douglas S. and Taylor, J.Edward (Eds.): *International Migration: Prospects and Policies in a Global Market*. Oxford: Oxford University Press 2004.

the combined number for the USA, Canada, Australia and New Zealand is very low, 3,9%.¹¹¹

The table below shows how asylum applications into the EU countries were high until 1993. From 1993, the number of asylum applicants dropped drastically until recent date. To have a precise view in numbers, see Fig.2 Number of Asylum seekers in the EU Territory, 2001-2006 on page 72 of this work.

Fig.1 Asylum applications submitted in industrialized countries, 1990-2004.



EU 15 refers to member states of the EU prior to 1 May 2004.

EU 25 refers to member states of the EU as of 1 May 2004.

Europe includes EU 25, Bulgaria, Iceland, Liechtenstein, Norway, Romania, Switzerland and Turkey.

Source: UNHCR: The State of the World's Refugees: Human Displacement in the New Millennium, Oxford University Press Inc.: New York 2006.

¹¹¹ The percentages are from U.S. Committee For Refugees And Immigrants (USCRI): World Refugee Survey 2002, Washington, D.C.

These insignificant entries in the 1990s prompted an aggressive reaction from the right and left wings in the different European countries, which led to a politicisation of migration, related aspects that catalysed the pressure of migration control and further developed to the external border control system. The immediate reaction from the EU governments is an initiative to control, manage and stop asylum seekers and other migrants through the establishment of treaties, laws in independent EU states and the construction of camps within the EU states and its external borders like Eastern Europe and in regions known to be refugees producing regions in recent days like Africa.

Discussions Surrounding the New Camp System

The cultivated plans of the United Kingdom (UK) government was to halve, if possible stop migrants and asylum seekers from entering the UK and other EU states and to deport those with failed asylum claims into Transit Processing Centres (TPCs). Transit Processing Centres are centres found at the external borders of the EU states where prospective asylum seekers wanting to come into the EU states have to first file in their asylum claims. If the claims are recognised, then the applicants can move into the EU states.

And Regional Protection Areas (RPAs) are camps found at the different regions of the world where asylum seekers and refugees wanting to come to any of the EU states must first file in their asylum claims. If the claims are recognised, the recognised asylum seeker will be moved to a country of his or her choice for resettlement. If the claims are rejected, the refugees will not be allowed to enter the EU territory and since these camps are closer to the country of origin of the persecuted person, it will be easy to bring the person back to the country of origin. These camps in these areas would be opened to asylum seekers from an agreed list of nationalities in the region and accept returns of asylum seekers of that nationalities who had applied for asylum elsewhere in the EU territory. They would be operated by an international organisation but hosted by a Nation State.

These projects were leaked to the public by the British newspaper, The Guardian in February 2003. The UK government as, „The New Vision for Refugees“ baptized this strategy¹¹².

¹¹² See Travis, Alan: Asylum report: Shifting a problem back to its source: Would-be refugees May be sent to protected zones near homeland. The Guardian, London, 5 February 2003.

Though this idea came out from the UK government to the public as the pioneer country, other EU states have already nursed similar plans. The Danish government came out in 2002 with a similar idea entitled “Protection in the Region”¹¹³

Before this period, back in 1986, the Danish government made a proposal at the United Nations General Assembly, proposing the creation of Regional United Nations Processing Centres Administration Resettlement”¹¹⁴.

In the proposed draft of 1986, the Danish government mentioned the fact that “asylum seekers who arrive irregularly in third countries outside their regions should in principle be returned to the UN Processing Centres of their home region to have their case examined:¹¹⁵

Since 2001, the Danish government carried on discussions similar to that of US government to intercept Haitian and Cuban asylum seekers or the Australian “Pacific Solution” to stop the “Boat People” from Indonesia. The Danish government played its game in a cunning manner that it finally turned out as if the UK government is the original author of this ideology. It is said that:

“Hence, the Danish government avoided to be shamed as the architect of yet another restrictionist initiative targeting refugees in Europe, and little did the world note that Pia Kjaersgaard, the leader of the nationalist Danish People’s Party, characterised Transit Processing Centres as a “Superb idea” and announced that her party would push for earmarked allocations in the 2004 Danish state budget. Jesper Thobo-Carlson and Flemming Pedersen, “S stotter indsats mod asyl-strome”.¹¹⁶

¹¹³ Bertel Haarder, Danish minister was the author of “Reception in the Region”. He designed the USA Idea where asylum seekers from Haiti trying to make their way into the US were detained in Guantanamo Bay in a region out of the USA. Bertel main idea was to detain asylum seekers in camps found in their regions of origin. This idea came up at the second half of the Danish Presidency of the EU.

¹¹⁴ UN General Assembly, International procedures for the protection of refugees: draft resolution/Denmark, 12 November 1986, U.N. Doc. A/C.3/41/L/51.

¹¹⁵ UN General Assembly, International procedures for the protection of refugees: draft resolution/Denmark, 12 November 1986, U.N. Doc. A/C.3/41/L/51.

¹¹⁶ Noll, Gregor: Vision of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones. In: European Journal of Migration and Law Vol. 5, 2003, Issue 3, pp. 303-341.

Even before the Danish government made her second proposal in 2001 after the first in 1986, the Netherlands have already introduced the theme “Reception in the Region of Origin” in the agenda of the Inter-Governmental Consultation (IGC) by Mr. Aad Kosto, the former Dutch Secretary of Justice, in his speech where he enumerated the possibility of reception centre in the region of origin and also proposed a system where asylum seekers should be deported to reception centres in their different regions of origin.¹¹⁷

This concept already welcome by many EU States, was backed by the British government of Tony Blair with many arguments that the international asylum system to protect and manage refugees is failing. The report states, more money is spent on asylum seekers who make it to the UK or EU states than asylum seekers in other parts of the world. He claimed that between half and three quarters of those seeking refuge do not meet the criteria of full refugees. The report made mention of the difficulty to remove failed asylum seekers. It states,

“It is time consuming, extremely difficult and costly to remove those without a valid claim, which undermines public confidence in the system and increases the attractiveness to economic immigrants.”¹¹⁸ The Draft made allusion to criminal organisations that smuggle asylum seekers into Europe and there by allowing many seeking asylum to enter the west illegally.

He said, “many thousands of dollars facilitating cross continental illegal movement usually costs between \$ 5000- \$ 15, 000”, where as there are 12 million of genuine refugees in the world according to the UNHCR.

Despite the arguments forwarded by the UK government to adopt this plan, the main reason behind is to reduce if possible stop completely the “spontaneous influx”¹¹⁹ of

¹¹⁷ IGC, Kosta, Aad, speech at the Fifth Conference of European Ministers Responsible for Migration Affairs. Athens, 18-19 November 1993, p.52

¹¹⁸ Travis. In: The Guardian, London, 5 February 2003.

¹¹⁹ To stop the coming in of prospective asylum seekers and refugees Tony Blair main intention is to bring the Geneva Convention for Refugees to an end. From his arguments, it is clear that he does no more favour the existence of the asylum system. He cannot be using asylum influx when statistics are clear that the number of asylum seekers that came in in 2002-2003 drastically dropped if compared to the number that came in 1992-1993.

asylum seekers in the UK and other EU states thereby shifting the burden of asylum to other parts or regions of the world.

As a reaction to the UK proposal, the United Nations Higher Commissioner for Refugees (UNHCR) wanted to lead this project and in order not to be left behind by its donors came up with what is commonly known as the “Three Prongs” or “Three Hard Solutions” in London, on the 17 of March 2003, a meeting hosted by the UK government. “The Swedish Minister for migration vividly dissociated himself from plans to erect TPCs and expressed astonishment that “the High Commissioner himself supports these ideas.”¹²⁰ Meanwhile, as this project first came up, the then German minister of the interior, Otto Schily in Veria, Greece on the 28 of March 2003, first manifested some doubts that the TPCs is not a feasible project. Some months later, in June 5-6 2003, he had “apparently changed his mind and supported the proposals.”¹²¹ And again:

“At a meeting of Justice and Home Affairs ministers in the U.K on September 9, 2005, German Minister Otto Schily again presented the idea of screening asylum seekers at centres in North Africa.”¹²²

As this discussion continues, Frattini, the EU minister of Justice and security announced: “Beside other things the so called protection programme in the transit countries. These plans will clearly not have anything more in common with the favourite reception centres proposal of the former minister of the interior, Otto Schily (SPD). Under other pilot projects in Ukraine and in Tanzania and other crises regions as the great seas should this project be instituted. The aim is for the officials of these countries to take care of asylum issues. Apart from Ukraine and Moldava, Frattini also clearly mentioned White

¹²⁰ Noll. In: European Journal of Migration and Law Vol. 5, 2003, Issue 3, pp. 303-341.

¹²¹ Noll. In: European Journal of Migration and Law Vol. 5, 2003, Issue 3, pp. 303-341.

Marcher, Annette and Claus Blok Thomsen: “EU-forslag: Indespaer flygtninge” (EU-proposal: Lock Up Refugees). In: Politiken, 6 June 2003, p.2.

¹²² Human Right Watch: Stemming the Flow. Abuses Against Migrants, Asylum Seekers and Refugees. September 2006 Vol.18, No.5 (E)

Website of Human Rights Watch: <http://www.hrw.org/reports/2006/libya0906/10.htm> , accessed on the 19 of November 2007.

Russia-a state that is serious and continuously heavily criticised because of its continues and serious abuse of human rights.”¹²³

2. The Main Content of Transit Processing Centres and Regional Protection Areas (The Blair’s Proposal)

This proposed new vision for refugees is a plan on how to better manage the asylum process globally “breaking the link between illegal immigration and asylum seeking.”¹²⁴ Qualified by the British government as a pro-refugee and anti-asylum seeking strategy.¹²⁵

This came up as a result of an increasing number of asylum seekers in the United Kingdom. This raised a debate in which Tony Blair promised to halve asylum applications of the 2002 under in 2003. In order to meet up his plan, he did not concentrate to the UK domestic program but also to the international asylum system. On the 10th of March 2003, Tony Blair sent a letter to the Greek Prime Minister Costas Simitis, at the time, Greece was at the EU presidency“.¹²⁶

In the letter he demanded on the agenda for discussion on March 23 2003, the inclusion of an item of the “better management of asylum process globally” in the European Council in Brussels. This letter carried a seven-page document of proposals on how the refugee system could be better managed and the creation of transit processing centres to deter asylum seekers wanting to enter the EU states.

2.1. Tony Blair’s Arguments for TPCs and RPAs

Tony Blair justified his letter or project by using different arguments. He made mention of the inequitable division of protection resources. He held that “support for refugees is extremely inequitable, with asylum seekers who make it into the UK and other EU states frequently receiving support and legal costs exceeding \$10.000 a year, whereas the

¹²³ Reckmann Jörg: EU adressiert Transitländer- Flüchtlingsprogramme geplant. In: Frankfurter Rundschau 14.01.2006. This information is got from <http://www.abschiebehaft.de/presse/p653.htm> accessed on the 17 of November 2007.

¹²⁴ United Kingdom Cabinet Office and Home Office: “New Vision for Refugees”. Source: Informal Circulation, March 2003.

¹²⁵ UK: “New Vision for Refugees”. Informal Circulation, March 2003.

¹²⁶ The letter from Tony Blair to Costas Simitis can be found on the Statewatch website: <http://www.statewatch.org/news/2003/jun/07eubuffer.htm>, accessed on 20th of December 2005.

UNHCR only spends an average of \$ 50 on each refugee or other “person of concern” around the world. He went further to argue that much of the resources used to protect asylum seekers in the western countries could be used to give a better protection to asylum seekers out of the EU states. Another objective of the Blair’s proposal was the halving of the number of asylum seekers coming to the UK and other EU states.¹²⁷

Further argument that was raised was that the UK and other EU states want “ to provide a fairer system for refugees.” Their pretended intention here is to provide effective protection to a larger number of genuine refugees than the small number that manages to reach the West. In this light he as well argued that the RPAs would be safe areas where the UNHCR has responsibility for providing protection and humanitarian support for refugees.

The creation of RPAs will act as deterrent effect to “economic migrants” and “potential terrorists” who use the asylum system to enter the UK and other parts of the EU.

This will help in reducing the abuse of the asylum system.

To defend the RPAs and TPCs as a project to be admired, the UK proposal brought in the principle of intervention. “Intervention”¹²⁸ will prevent the creation of refugees. There will be a world without refugee and people will not be forced to migrate.

He added that the sole method in which refugees could move into the EU territory is through the management of resettlement schemes in the Regional Protection Areas as was done by the USA, Australia and other countries. This will permit countries that currently accept refugees to share the burden of the number of asylum seekers or refugees that will be resettled.

¹²⁷ On the 7th of February 2003, in an interview with the BBC’s Newsnight, Tony Blair asked the government to meet its objective, by September 2003, of halving the number of asylum seekers in the UK from its peak in October 2002 of 8,900.

¹²⁸ Intervention in this context means, all activity undertaken in another sovereign State both coercive and non-coercive activity. Therefore it ranges from diplomacy, to development, sanctions, to conflict resolution and at the extreme, to military action.

2.2. Blair's Possible Solutions

The draft went ahead to make proposals on how this project will be implemented in order that it should not be a failure. To Blair, every means necessary will be implemented to see a success even if it means using force. In that he said, intervention including military means, into countries producing refugees, to stop the flow of refugees and to enable returns.¹²⁹

Another suggestion from the Draft is the amendment of the 1951 Refugee Convention to create space for asylum seekers to be returned to safe havens and the introduction of exclusive practice under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹³⁰ On this draft, an emphasis was made on "Protection but not Migration." From such declaration, it was clear that Blair intended to sever migration into the EU states.

The Draft states the institution of Transit Processing Centres and Regional Protection Areas. The former should be closer to the external borders of Europe meanwhile the later at the sources of refugees producing countries. To defend this point, the Draft argues that the proposal is in conformity with the decisions of the European Council meeting at Tampere in Finland from the 15 to 16 of October 1999, which concluded a document harmonising EU asylum system¹³¹.

The other argument forwarded by this Draft is that the idea of TPCs and RPAs are in conformity with the Convention Plus ideology¹³² of the former Higher Commissioner for Refugees, Ruud Lubbers. This argument where states could negotiate specific issues on

¹²⁹ UK: "New Vision for Refugees". Informal Circulation, March 2003, pp. 9-10

¹³⁰ United Kingdom Cabinet Office and Home Office: "New Vision for Refugees". Source: Draft, February 2003, pp. 10-25

¹³¹ At Tampere it was concluded that: "The European Council will work toward establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Refugee Convention. In the long term, it would be necessary to establish a common asylum procedure and a uniform status for those who are granted asylum valid through out the Union."

¹³² Convention Plus states that the 1951 Convention "does not alone suffice". Its intention is to create a foundation on which states might negotiate "Special Agreements" to address aspects not adequately addressed by the Refugee Convention of 1951.

refugees has acted as a springboard of charge to the creation of Transit Processing Centres and Regional Protection Areas.

2.3. Transit Processing Centres (TPCs)

According to the Draft, asylum seekers reception camps will be built along major routes, at the external borders of European Union states where asylum seekers arriving spontaneously and intending to reach the UK and other EU states would be detained in these camps where their claims would be processed.

“The concept of Transit Processing Centre (TPC) is presented as the construction of reception camps for asylum seekers at the external borders of the EU states, where asylum seekers from all over the world will file in their asylum claims.”¹³³

As Gregor Noll puts it, “The core idea of the safe haven is its exclusive role as an access point to the refugee protection.”¹³⁴ Furthermore, the draft states that; “any asylum seeker would be able to go directly to one of the havens and, most importantly, if they seek for asylum from a particular state, this state has the right to send them to a haven and protection will be provided for them there. Therefore, any asylum seeker that arrives in the UK (or elsewhere) would be immediately turned around to the safe havens. This decision could be challenged only by judicial review.”¹³⁵

Those asylum seekers who already entered Europe will be transferred to the TPCs where they will be detained meanwhile their claims are processed. If an asylum claim were considered genuine, the asylum seeker would be resettled either in the UK or other EU states of the choice of the asylum seeker. If an asylum case is rejected, the asylum seeker will not be allowed to enter the EU states but the person will be returned to the country of origin. The Draft proposes they might be a possibility where minors and disabled persons would not be taken to these centres but it did not elaborate on issues of minors and disabled persons accompanied by others. The Draft as well failed to make

¹³³ Nsoh, Christopher: Konzepte der EU-Lagermodelle „Transit Processing Centres“ und „Regional Protection Areas“. In: Forschungsgesellschaft Flucht und Migration / Niedersächsischer Flüchtlingsrat e.V. / Komitee für Grundrechte und Demokratie (Eds.): *AusgeLAGERt. Exterritoriale Lager und der EU-Aufmarsch an den Mittelmeergrenzen*. Berlin/ Hamburg 2005. p.138

¹³⁴ Noll. In: *European Journal of Migration and Law* Vol. 5, 2003, Issue 3, pp. 303-341.

¹³⁵ UK: “New Vision for Refugees”. Draft, February 2003, p. 10.

mention of asylum seekers intercepted en route to a destination country if they would also be transferred to TPCs? This question is left open, but as Amnesty International puts it, “the proposal clearly envisaged this as a possibility.”¹³⁶ For the management of the TPCs, the Draft envisages International Organisation for Migration. The processing of claims by EU teams and administrative appeals is to be done by the UNHCR.

The United Nations Higher Commissioner for Refugees (UNHCR) emphasised the need for TPCs to be established within the borders of the EU states. Though this proposal did not please the EU states supporting this project, the Danish Memorandum concluded that:

“If standards are acceptable, UNHCR would be less worried with regard to whether a Transit Processing Centre is placed inside or outside the Union.”¹³⁷ In addition, as Gregor Noll puts it, the drafters of the Danish Memorandum seem to have taken impression by UNHCRs suggestion to return manifestly unfounded cases to closed processing centres and that the Memorandum proposes to define “manifestly unfounded” to include nationalities in general with a very high rejection rate, e.g. more than 90 percent.¹³⁸

In TPCs the legal system to be used will be that of the country in which the TPC is found and not that of the country the asylum seeker was heading to. It is mentioned in the Memorandum as reduced legal safeguards in determining procedures. This can be seen in the following quotation of the Danish Memorandum,

“The refugee status determination-procedure at the Transit Processing Centres need not be absolutely identical with present national procedure as long as it is in accordance with standards accepted by UNHCR. As such, in the case of the Australian offshore processing programme, Australian jurisdiction will not apply to the refugee status

¹³⁶ Amnesty International: UK/EU/UNHCR, Unlawful and Unworkable – Amnesty International’s views on proposals for extra-territorial processing of asylum claims, AI Index: IOR 61/004/2003, 18 June 2008.

¹³⁷ The Danish memorandum, established as a result of a meeting on 23 April, 2004, p.4 attended by the UK, Denmark, and the Netherlands, as well as the IGC, UNHCR and the IOM.

¹³⁸ Noll. In: European Journal of Migration and Law Vol. 5, 2003, Issue 3, pp. 303-341.

determination of the claims of the transferred asylum seekers and quicker system based on administrative review was established and implemented.”¹³⁹

In relation to the staff, it is said, “One could also envisage a system, where designated countries participating in the Transit Processing Centres-agreement, using their own staff, process the claims at the Transit Processing Centre in the first instance and where the review is carried out by an independent body, consisting of UNHCR or a panel of UNHCR and government representatives.”¹⁴⁰ The question of how the TPCs will function comes up and the Danish Memorandum answered that “in particular” TPCs would function in relation to the national legislation in the country it is found.

2.4. Regional Protection Areas (RPAs)

Regional Protection Areas are defined as areas where asylum seekers and refugees can find protection. They would be opened to any asylum seeker from an agreed list of nationalities in the region and accept returns of asylum seekers of those nationalities who had applied for asylum elsewhere. They would be operated by an international organisation but hosted by a Nation State.”¹⁴¹

The RPAs would be constructed closer to the source countries of asylum seekers in order to facilitate swift repatriation. For Example, Iraqis who claimed asylum in the UK could be moved to a Protection Area in say, Turkey, Iran, or the Kurdish autonomous Protection Area. In relation to this project, particular list of nationalities and ethnic origins would be designated in a particular RPA or country. In this regard, the host State, funding State, funding State and international protection organisation would have to agree on a list of nationalities. Basing on this argument, asylum seekers originating from defined nationalities can seek asylum in a specific RPA designated to their nationalities. Nevertheless, the UK Draft states:

¹³⁹ Danish Memorandum, April 2004, p. 5.

¹⁴⁰ Danish Memorandum, April 2004, p. 5.

¹⁴¹ UK: “New Vision for Refugees”. Draft, February 2003, p. 11.

“Other nationalities and ethnic groups could be accepted where the international organisation, host State, and funding States agreed to do so. There will be initial screening to establish identity, register and check for security risk cases.”¹⁴²

In the first six months, considered as short term, “temporary protection could be presented to all without any determination of status.”¹⁴³ Meanwhile, in the medium to long term, it will be decided if those who arrived are qualified for asylum. For those who are not qualified, their documents will not be processed since it is easy for them to go back to their various countries. “If the claim is unfounded there will be needed to be removed from the Area”.¹⁴⁴ The UNHCR will be the body to remove failed asylum seekers from the RPAs. Meanwhile, for those whose claims are genuine, they will have the opportunity to remain in the Regional Protection Areas. And this will be for a short while before they can return to their countries of origin but if the protection need is long term then other options will need to be pursued.

As said above returning asylum seekers who spontaneously arrived the UK and other EU countries to RPAs is one of the main aspects of the New Vision. The asylum seekers will be returned to their home regions of where “effective protection” could be offered and their claims would be processed with a view to manage resettlement in their home regions or, for some, access to resettlement schemes in Europe.

The UK Draft compares this project to the “principle similar to that of safe third countries.”¹⁴⁵ It is argued that asylum seekers do not need protection in the UK or EU states because there is a safe Area where protection could be got. To return an asylum seeker to a RPA from a EU state, his fingerprints would be taken, his nationality established and an interview conducted. He will be informed that he will be carried to the RPA that his country of origin is listed to. He will be detained meanwhile his documents are processed for return. What is really challenging is that no particular time was stated for the processing of the documents. Detention to process the documents will obviously

¹⁴² UK: “New Vision for Refugees”. Informal Circulation, March 2003, p. 13.

¹⁴³ UK: “New Vision for Refugees”. Draft, February 2003, p. 13.

¹⁴⁴ UK: “New Vision for Refugees”. Draft, February 2003, p. 13.

¹⁴⁵ UK: “New Vision for Refugees”. Draft, February 2003, p. 14.

take a very long time if it proves difficult to get other documents from the country of origin of the asylum seeker to prove the origin of the person.

2.5. Protection Zones

The Danish government finally came up with the idea of a protection Zones in a memorandum in which Regional Protection Areas was rejected with a replacement of "Protection Zones." The project of the Danish government was a summary of the informal discussions that have taken place with other EU partners like Netherlands and UK governments. This Memorandum came up by the end of 2004. In it, Protection Zone is defined as a;

"Zone in a country in the region close to a specific country of origin offering effective protection to refugees and displaced persons." Though RPA was changed to Protection Zone (PZ), the term "Transit Processing Centre" was not changed. In the Memorandum it was defined as, "a closed reception centre processing asylum applications. It would be located outside the destination state".¹⁴⁶

This Memorandum also drummed the use of Transit Processing Centres. It described it as "a "closed reception centre"¹⁴⁷ processing asylum applications. It will be located outside the destination state."¹⁴⁸

The Danish Memorandum makes reference on process to be used to screen spontaneous arrivals in destination states. The screening procedure is classified into three groups. They are, asylum seekers to be returned to Protection Zones, asylum seekers to be processed in Transit Processing Centres and finally asylum seekers to be processed in normal asylum procedures in the destination country. The screening process is going to be swift and in case of appeal, it will not have a suspenseful effect. The issue of lack of cooperation on the side of the asylum seeker with the authorities and identification papers could facilitate the transfer of an asylum seeker to the Transit Processing Centre.

¹⁴⁶ Danish Memorandum, April 2004, p.1.

¹⁴⁷ Closed Reception Centres means the asylum seekers will be detained and will not be allowed to go out from the camp at any hour of the day when the asylum claim has not yet been decided upon. In this case, if an asylum seeker is deported, it will be easy to deport the person back to the country of origin.

¹⁴⁸ Danish Memorandum, April 2004, p.1.

In the Danish Memorandum, the main pretended aim of PZs is to provide “effective protection” and due to that the asylum seeker will not be sent back to his or her county of origin where the life is threatened. This is why the Memorandum states that: “a non-refoulement guarantee, physical protection and an appropriate level of social protection”.¹⁴⁹ According to Gregor Noll, The Memorandum refers to the EU Directive on Asylum Procedures, Annex 1, and Paragraph 15 of the Summary Conclusion of the Lisbon Expert Roundtable of 9 and 10 December 2000.”¹⁵⁰

The Danish Memorandum argues that PZs are important for resettlement programme and also discusses the criteria and procedures for resettlement. It also envisages that those recognised, as refugees should be resettled in the EU state the asylum seeker was heading to. This can be seen in the following quotation,

“...Those granted refugee status should be resettled in the destination state.”¹⁵¹ From this quotation, it is easily believed that the Memorandum confirms the fact that those who are resettled from the multitude who seek asylum are chosen by using defined criteria created in collaboration with the UNHCR and in taking into account the characteristics of the refugee situation. Such criteria supposedly include vulnerability and long stay. Lottery selection was envisaged as the third category.

As already said, resettlement of refugees is usually done from the multitude. “If all inhabitants of a Zone would be determined as refugees, this will make all eligible for resettlement, and the whole idea of Protection Zone will come to naught. If none were to be resettled, all would need to be treated in accordance with 1951 Refugee Convention standards.”¹⁵²

The question is if any host state will agree to such demands that all the asylum seekers should be treated in accordance of the 1951 standard on its territory or if the participating state will have the financial means and political will to bring either standards or

¹⁴⁹ Danish Memorandum, April 2004, p. 3.

¹⁵⁰ Noll. In: European Journal of Migration and Law Vol. 5, 2003, Issue 3, pp. 303-341.

¹⁵¹ Danish Memorandum, April 2004, p. 3.

¹⁵² Danish Memorandum, April 2004, p. 110.

resettlement numbers up to that level. Lottery mechanism and group determination go well together but the Memorandum considers lottery selection only as one of three categories. According to Noll, the logic in this part of the Memorandum is hard to grasp. Perhaps, its drafters felt same, as they added the following paragraph, the availability of all integration and/or voluntary repatriation is not a precondition for the implementation of the concept. The Protection Zone element is developed to respond to protracted refugee situations, where repatriation or local integration would not be available in the near future. However, the non-availability of repatriation or local integration may well require a significant requirement component as part of the Protection Zone agreement.¹⁵³

¹⁵³ Danish Memorandum, April 2004, p. 110.

Fig.2 Number of Asylum seekers in the EU Territory, 2001-2006

States EU 25	2001	2002	2003	2004	2005	2006
Belgium	24.527	18.768	16.940	15.357	15.957	11.590
Denmark	12.403	5.947	4.557	3.222	2.260	1.918
Germany	88.287	71.127	50.563	35.607	28.914	21.029
Finland	1.650	3.129	3.221	3.861	3.574	2.288
France	47.260	50.798	55.863	59.424	54.499	39.315
Greece	5.500	5.664	8.180	4.359	9.050	12.267
United Kingdom	88.300	85.880	61.051	33.930	25.725	27.850
Ireland	10.325	11.634	7.900	4.766	4.323	4.315
Italy	14.844	7.281	13.460	9.720	9.500	10.110
Luxemburg	689	1.043	1.550	1.372	799	520
Netherlands	32.579	18.667	13.402	7.849	12.347	14.465
Austria	30.135	37.074	32.364	24.676	22.471	13.350
Portugal	192	245	110	110	790	130
Sweden	23.499	32.995	31.355	23.161	17.530	24.322
Spain	9.219	6.179	5.731	5.398	5.049	5.310
Estonia	21	9	10	20	10	10
Latvia	14	30	10	10	20	10
Lituanian	256	294	180	140	120	160
Poland	4.506	5.153	6.921	8.077	6.863	4.270
Slovakia	8.151	9.739	10.323	11.354	3.489	2.864
Slovenian	1.511	702	1.102	1.173	1.596	518
Czech Republic	18.087	8.481	11.394	5.459	4.021	3.016
Hungary	9.554	6.412	2.401	1.600	1.609	2.109
Malta	120	350	570	1.230	1.170	1.270
Cyprus	1.770	950	4.410	9.860	7.742	4.545
Total EU 25	433.399	388.551	343.568	271.735	239.428	207.551
Since 01.01.2007 in EU						
Bulgaria	2.428	2.888	1.549	1.127	822	665
Rumania	2.431	1.108	1.077	662	594	460

Source: UNHCR, German Ministry of Interior (BMI), Stand 01 January 2007

2.6. Earlier Existed TPCs and RPAs

The politics of exclusion and externalisation into special spaces and periods are not new as a solution to refugee's crises in the world. Similar migration and continuous refugees situation existed in the fifties to the seventies that led to the application of similar approaches. The cases of displaced people in Europe after the second world war, the Indo- Chinese refugees boat people in 1970s and 1980s, the use of Guantanamo Bay by the US to check Haitian refugees wanting to enter USA in the 1990s and the Australian so called "Pacific Solution" to stop the MV Tampa, a Norwegian container ship that rescued some 433 refugees who used a wooden fishing boat on the high seas from Indonesia to Australia will be examined in this section.

After the Second World War, millions of people were displaced in Europe and needed a solution. Many movements arose in support of the displaced people. "British refugees advocates, backed by NGOs and UNHCR, called for international action by governments".¹⁵⁴ Due to the pressure coming from refugees humanitarian organisations, the governments and the United Nations declared 1959 as "World Refugees Year" and a solution was instituted for those displaced people to respond to those remaining both within and outside the camps. The founded solution of governments did not pave the path for all the displaced people into the different countries but using certain criteria, governments selected those who were young and healthy and resettled them.

The hard conditions of thousands of boat people fleeing Vietnam, Laos and Cambodia but who were not allowed to make landfall by nearby states generated protests from the international world that states concerned were obliged to come together in the Indo-Chinese Conference of July 1979 to examine the situation of the boat people. Due to this pressure;

"Western states agreed to increase dramatically the number of refugees they resettle from the region. In exchange, it was agreed that the boat people would be recognised as refugees *prima facie*, that illegal departures will be prevented and that Regional Processing Centres will be established. The result was a formalised *quid pro quo*:

¹⁵⁴ Zarjevski, Yéfime: *A future preserved: international assistance to refugees*. Oxford 1988, pp 88-90.
Loescher, Gil: *The UNHCR and world politics: a perilous path*. Oxford 2001, pp 89-91.

resettlement to Western states in exchange for assurances of first asylum in the region.”¹⁵⁵

As applying first of all at a Regional Protection Areas, nine years later, could only do resettlement the centre was full of many asylum seekers. This brought a deterrence rationale,

“The underlying assumption of the parties to the agreement being that most of the boat people subject to it were not refugees.”¹⁵⁶ They were qualified as economic migrants. That forced the European government to gather at the second International Indo-Chinese Conference in June 1989 where they decided to adopt a Complimentary Plan of Action (CPA). It is acknowledged that:

“The CPA contained five mechanisms through which the countries of origin, countries of first asylum and resettlement countries cooperated to resolve the refugee crisis in South-East Asia: Orderly Departure Program (ODP) to prevent clandestine departures; guarantee temporary asylum by countries in the region; individual refugee status for all new arrivals; resettlement to third countries for those recognised as refugees; and facilitated returns for rejected claimants.”¹⁵⁷

Guántanamo bay which is today a camp used by the Americans to process cases of suspected terrorists was formerly used by the same government to intercept asylum seekers from Haiti who wanted to make their way to USA between 1994 and 1995. The US used the special force, the US Coast guards and the US Navy to stop refugees arriving by boats. The US conveyed those they claimed to have “credible Fear” of persecution first of all to a Navy hospital ship.

“The USNS Comfort” found at Kingston harbour in Jamaica and later to the US Naval Base on Guantanamo bay. The Haitian asylum seekers were processed at Guantanamo bay to either resettle those with credible claims in the US or return those with failed claims back to Haiti. At that very period, there was a US military intervention in Haiti that

¹⁵⁵ Loescher / Milner In: International Affairs, Vol 79, 2003, pp. 583-617.

¹⁵⁶ Helton, Arthur C.: Refugee Determination under the Comprehensive Plan of Action: Overview and Assessment. In: International Journal of Refugee Law, Vol. 5, No. 4, (5IJRL 544), 1993, pp 544-558, p. 556.

¹⁵⁷ Loescher / Milner In: International Affairs, Vol 79, 2003, pp. 583-617.

caused the spontaneous movement of Haitians. According to the IGC, the US ensured that Guantánamo was a “safe haven.”¹⁵⁸ Parallel to the Guantanamo bay, in Havana, the US instituted a kind of Regional Protection Area to interdict Cuban asylum seekers who wanted to go to America as they fled from the dictatorial regime of the Cuban government.

The Australian example, the so called “Pacific Solution” that is now functioning as a spring-board of charge to EU states to carry further with the Transit Processing Centres and Regional Protection Areas took place on the 26 of August 2001. On this day, a wooden fishing boat that left Indonesia to Australia carried about 433 asylum seekers. At one stage on the high seas, the wooden boat was sinking at the Indian Ocean about 140 kilometres north of Australian’s Christmas Island Territory.¹⁵⁹

A Norwegian registered container ship that was licensed and not supposed to carry more than fifty people, the MV Tampa, was around the wooden boat on its way to Singapore. The captain, Arne Rinnan received a call from the Australian authorities asking him to rescue the people from the sinking boat. He was told the wooden boat had eighty people on board. He agreed to assist and was guided to the boat by the Australian Coast guards.

The MV Tampa rescued the 433 people and inquired from the Australian government where the people should be taken. The Australian Coast guard officers said they did not know.¹⁶⁰ Captain Rinnan took the direction to the Christmas Island. As the vessel approached the Island but not yet at the Australian territory, he was asked by the Australian authorities not to enter the Australian territory with the people but to carry them to Indonesia. The captain said to the Australian Department of Immigration and Multicultural Affairs that if he heads towards Indonesia, he was going to risk hundreds of

¹⁵⁸ IGC: “Reception in the Region of Origin”-Draft follow-up to the September 1994 working paper, August 1995, Annex 2, p. 27.

¹⁵⁹ Extract from Minister for Immigration and Multicultural Affairs & Ors vs. Eric Vadarlis, Victoria Council for Civil Liberties Incorporated & Ors, Federal Court of Australia, V 1007 & 1008 of 2001, Ruddock vs. Vadarlis, 2001, FCA 1329.

¹⁶⁰ Extract from Minister for Immigration and Multicultural Affairs & Ors vs. Eric Vadarlis, Victoria Council for Civil Liberties Incorporated & Ors, Federal Court of Australia, V 1007 & 1008 of 2001, Ruddock vs. Vadarlis, 2001, FCA 1329.

lives in the open ocean. He saw the Christmas Island as the better solution. A solicitor, James Neil taken by the owners of the ship, also added that the ship does not have enough food and water on board to sustain the passengers and crew for long.¹⁶¹

The solicitor further said in another discussion with an Australian representative “The medical situation on board is critical. If it is not addressed immediately people will die shortly. At this time four people on board are unconscious. 1 Broken leg and three women are pregnant. Additionally diarrhoea is severe and a number of people are in a dangerously dehydrated condition. The ship has now run out of medical supply and has no way of feeding these people.

It is a simple matter to send a boat from the shore to collect the sickest people. Supply food and medical assistance. It could be along side in 30 minutes.”¹⁶²

With all the delay and the critical situation of some of the people on board, captain Rinnan was very concerned and sailed the ship into Australian territorial waters on the 29 of August 2001 and made a stop at about four nautical miles from Christmas Island. This action from captain Rinnan provoked the Australian government and within about two hours, forty-five Special Armed Services (SAS) from the Australian Defence Force from Christmas Island stormed the MV Tampa.

On the following day, 30 of August 2001, the Norwegian ambassador to Australia visited the MV Tampa where he was handed a signed letter entitled, “Afghan Refugees Now off the coast of Christmas Island” in which an excerpt reads:

“ You know well about the long time war and it tragic human consequences and you know about the genocide and massacres going on in our country and thousands of innocent men, women and children were put in public grieve yards (Sic) and we hope you understand that keeping view of above mentioned reasons we have no way but to run out of our dear homeland and to seek a peaceful asylum. And until now so many

¹⁶¹ Extract from Minister for Immigration and Multicultural Affairs & Ors vs. Eric Vadarlis, Victorian Council for Civil Liberties Incorporated & Ors, Federal Court of Australia, V 1007 &1008 of 2001, Rudors vs. Vadarlis, 2001, FCA 1329.

¹⁶² Extract from Minister for Immigration and Multicultural Affairs & Ors vs. Eric Vadarlis, Victorian Council for Civil Liberties Incorporated & Ors, Federal Court of Australia, V 1007 &1008 of 2001, Ruddock vs. Vadarlis, 2001, FCA 1329.

miserable refugees have been seeking asylum in so many countries. In this regard before this, Australia has taken some real appreciable initiatives and has given asylum to a high number of refugees from our miserable people. This is why we are wholeheartedly and sincerely thankful to you. We hope you do not forget we are also from the same miserable and oppressed refugees and now sailing around Christmas Island inside Australian boundaries waiting permit to enter your country. But your delay while we are in the worst conditions has hurt our feelings. We do not know why we have not been regarded as refugees and deprived from rights of refugees according to International Convention (1951). We request from Australian authorities and people at first not to deprive us from the rights that all refugees enjoy in your country. And in the case of rejection due to not having anywhere to live on the earth and every moment death is threatening us. We request you to take mercy on the life of (438) men, women and children.”

The letter from the Afghan refugees did not appeal to the Australian government. The drama ended that the refugees were not allowed to enter Australia. They were transferred to a different vessel HMAS Manoora. Before their transfer, the Australian Prime Minister made an announcement on the issue. The announcement reads,

“I am announcing today that we have reached agreement with Governments of New Zealand and Nauru for the processing of the people rescued by the MV Tampa.

Under the terms of the agreement, the rescuees will be conveyed to Nauru and New Zealand for initial processing.

New Zealand has agreed to process 150 of those aboard the Tampa. It is envisaged that this will include family groups involving women and children. Those found to be genuine refugees in New Zealand would remain there.

The remainder of the rescuees will be assessed in Nauru and those assessed as having valid claims from Nauru would have access to Australia and other countries willing to share in the settlement of those with valid claims.

Australia will bear the full cost of Nauru involvement in this exercise.

Arrangement will be made to safely tranship the rescuees through a third country. We are currently in discussions with appropriate countries to affect this.

We are also working closely with the International Organisation for Migration and the UNHCR to ensure that these arrangements are managed carefully and that the rescuees receive appropriate counselling and assistance.

Australia will continue to ensure that the rescuees receive all necessary humanitarian assistance while these arrangements are put in place.

I would like to take this opportunity to express my Government's gratitude to the Governments of Nauru and New Zealand for their ready and constructive humanitarian assistance. 1. September 2001 (AB99)"¹⁶³

Following the agreement between the Australian and Papua New Guinean governments, the HMAS Manoora carried the asylum seekers to the port of Moresby in Papua New Guinea and then by aircraft to Nauru and New Zealand.

2.7. The Position of UNHCR to TPCS and RPAs

The UNHCR came up with a position as if to lead the Blair's proposed project. In a meeting in London organised by the UK government that took place on the 17 of March 2003, the United Nations Higher Commissioner for Refugees, Ruud Lubbers made a presentation, which was like a counter position to the UK government's position. In the presentation, he came up with his "Three Prongs" or three hard solutions to TPCs and RPAs. These three prongs are, solutions in the region of origin, improve domestic asylum and processing of "manifestly unfounded" cases in EU closed reception centres within EU borders. These proposals undermined;

"Some fundamental protection principles, notably in accepting that, at least within the EU, some classes of asylum seekers may be transferred out of the state where they

¹⁶³ Extract from the Minister for Immigration and Multicultural Affairs & Ors vs Eric Vadarlis, Victorian Council for Civil Liberties Incorporated & Ors, Federal Court of Australia, V 1007 & 1008 of 2001, Ruddock vs. Vadarlis, 2001, FCA 1329.

requested asylum for determination of their claims, detained in closed reception centres and subject to diminished procedural safeguard.”¹⁶⁴

Solutions in the Region of Origin (Prong)

According to the UNHCR, to seek asylum in regions of origin of refugees would strengthen protection capacity in host countries. This can be achieved through substantial financial and material investment in the different regions of origin to institute accepted objectives. Strengthening self-reliance in regions of origin in order to prevent secondary movement of refugees will also do this. The UNHCR puts it as follows

“To reduce the need of asylum seekers and refugees to move on in an irregular manner by making protection available and generating solutions.”¹⁶⁵

Solution in the region would further constitute development through encouraging voluntary repatriation and sustainable integration, Development through Local Integration (DLI). In this case more development assistance would be obtained to reach local integration, the engagement to increase resettlement for protection; and to attain effective protection in relation to individual screening procedures in countries of first asylum to enable access to all asylum seekers in there.

Improve Domestic Asylum (Prong)

The UNHCR declares its intention to work in collaboration with states to see into an efficient asylum system especially the asylum procedure.

This will be done by tightening the procedure through “an enhanced induction/ pre-screening/ admissibility phase together with first instance processing in reception centres, and making first instance decision less open to challenge.”

Processing in EU closed camps (Prong)

The third prong of UNHCR is to keep asylum seekers whose claims are “Manifestly Unfounded” into closed camps within the borders of EU meanwhile the claims would be rapidly processed by joint EU teams. This is usually an asylum seeker originating from

¹⁶⁴ Amnesty International 2003, p.2

¹⁶⁵ UNHCR Executive Committee: Agenda for Protection, Section 2, Goal 3, 53rd session, A/AC.96/965/Add.1, 26 June 2002.

countries considered without problems by the UNHCR. Asylum seekers from such countries would be considered as “Economic Migrants”¹⁶⁶.

The UK government considers such countries without problems to be found on a “White List.” The UNHCR makes it reference to the definition of “Manifestly Unfounded” to EXCOM Conclusion 30 (of UNHCR’s Executive Committee) which defined “Manifestly Unfounded” claims as, “ clearly fraudulent or not related to the criteria for the granting of refugees status... nor to any other criteria justifying the granting of asylum.”¹⁶⁷

The three hard solutions did not take into consideration some important aspects of the international refugees protection. The UNHCR accepted the fact to transfer some asylum seekers from the state they originally filed in their asylum claims to the TPCs and RPAs, to process their claims in domestic asylum procedure and finally, manifestly unfounded asylum claims in EU might be detained in close detention within EU borders. This as can be seen is a clear shift of the UNHCR from defending the refugees but the EU states. This what Ezra said:

“Indeed, there is enough evidence to suggest that the UNHCR was not as much guided by the interests of worldwide refugees as by the preferences of its major donor countries. As it was established and financed by the Western Bloc to primarily provide protection for refugees from Communist countries, it is not surprising that it took the appropriate steps to ensure the well being of these refugees.”¹⁶⁸

¹⁶⁶ This is an expression used by Tony Blair in the “New Vision for Refugees” Paper on pages 1 and 6-7 to describe migrants considered not to have come into EU territory because they were persecuted but because they are in search of a job to better their economic situation.

¹⁶⁷ UN High Commissioner for Refugees: The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, 20 October 1983. No.30 (XXXIV) - 1983. Executive Committee 34th session, Contained in United Nations General Assembly Document No. 12A (A/38/12/Add.1).

Online: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68c6118>, accessed 30 October 2007.

¹⁶⁸ Ezra, Esther: European Integration and Refugee Protection-The development of Asylum Policy in the European Union. Dissertation at the Ludwig-Maximilian-Universität München 2004, p. 14.

3. Analyses of the Concept of TPCs and RPAs Projects

3.1. Shifting Responsibilities not Costs

The scheme to carry asylum seekers to TPCs and RPAs should be interpreted as a strategy to push the responsibility of asylum to the regions from which the asylum seekers are coming as well as to other countries out of the EU states. This can be seen in the UK Draft where the UK and other EU states are contemplating to withdraw their signatures from the 1951 Refugee Convention if not of the fear that:

“A UK or European withdrawal from the Refugee Convention would lead to the collapse of the Convention with developing countries reasoning that they need not to tie themselves to obligations that the developed countries are not prepared to keep. This would result to increase global flows of refugees with millions of people being left in Limbo without protection.”¹⁶⁹

The promises of resettlement and protected entry that the European government is talking is a ploy to convince countries hosting these camps and centres that the burden of refugees would not weigh on them. But in reality, the governments of the EU states intend to push the burden of refugees on other states out of the EU states. The low rate of recognition of refugees in recent times in European countries and the unwillingness of the European governments to resettle refugees already recognised by the UNHCR but on the contrary put them under additional procedures and in the end to accept only the skilled, make it clear that the purpose is to exclude the migrants, refugees and asylum seekers.

“The UK and UNHCR proposals, and the EU communication, amount to a greater or lesser extent, to a responsibility shifting arrangement rather than responsibility sharing. The heightened demands that the proposals would place on EU accession countries, states bordering the EU or countries of first asylum would be considerable. EU accession countries may have little choice but, however heavily subsidized, their capacity to accord protection would be severely stretched, with the requirement of effective protection likely to be seriously compromised”¹⁷⁰

¹⁶⁹ UK: New Vision for Refugees, p. 9

¹⁷⁰ Amnesty International 2003, p. 34.

The Argument of Costs

The cost factor rose by the UK government's scheme when she says, "Operating Protection Areas in developing countries will be much cheaper than providing support in the UK"¹⁷¹ is questionable when one uses the analysis from other earlier projects. According to the report on both Haiti and Cuba from the Inter-Governmental Consultation (IGC) of 1995, "Regarding costs, the US found both schemes to be very expensive."¹⁷²

In relation to the Australian "Pacific Solution", it was realised that it is more expensive due to various reasons to process asylum claims on Regional Protection Areas or Transit Processing Centres than on the destination countries

To the Australian case, all the money allocated to process claims on the mainland was exhausted due to the processing of claims offshore and in the third countries- New Zealand, Nauru and Papua New Guinea. "On top of that, additional funds are allocated to offshore processing, making the Pacific Solution a net loss of some AUD 900 million for the Australian taxpayers from fiscal year 2002/2003 to fiscal year 2005/2006."¹⁷³

If actually some asylum seekers will give their consents and go to these extra-territorial areas and centres, it may be this will reduce the numbers entering Europe but that is not an argument to substantiate the fact that this project will be cheaper than processing claims at destination countries.

From these two mentioned examples, it is clear that the EU states are more concerned in excluding asylum seekers from their territory than the factor of cost. Refugees are not wanted in the EU states. From the Australian and US examples, the belief that extra-territorial processing of asylum seekers is a cost saving scheme is unrealistic. These statistics are well known to the European governments as members of the Inter-Governmental Consultations that have published results on extra-territorial processing.

¹⁷¹ UK: "New Vision for Refugees". 2003, p. 3

¹⁷² IGC: "Reception in the Region of Origin"-Draft follow-up to the September 1994 working paper, August 1995, Annex 2, p. 27.

¹⁷³ Kingston Margo: Terror, boat people, and getting old. In: The Sidney Morning Herald, 15 May 2000.

3.2. Legality in Transfers

By returning individuals to Transit Processing Centres and Regional Protection Areas, states cannot object the fact that this will infringe international law, human rights standards, and Regional treaties like European Convention for Human Rights and the principle of non-refoulement in the 1951 Convention of Refugees. According to the Universal Declaration of Human Rights, there is the right to seek asylum.¹⁷⁴

While there is no obligation to asylum in international law, everybody fleeing from danger because the life or freedom is at stake is entitled to go to a state considered peaceful and democratic for protection and security. If an asylum seeker is returned to the region of origin or any other region where the life and freedom are threatened, it is an infringement of this right. Reverting to this declaration, it is not only the country of an asylum seeker that is dangerous but also a whole region.

“The majority of asylum seekers entering Europe- Afghans, Iraqis, Iranians, Somalis- are fleeing not only unsafe home countries, but also unsafe regions of origin...Recent reports of Taleban agents active in the Northwest Frontier Province of Pakistan, of cross-border raids from Sudan and Somalia into Kenya, and of foreign agents active in Amman and Damascus, and the documented case of the murder of Rwandan children, held in a secure residence in Nairobi while awaiting resettlement.”¹⁷⁵

This very incident happened in Srebrenica where warriors attacked the refugee camp protected and guarded by UN troops during the war in Kosovo in the very region and some of the refugees were massacred. All these led to the conclusion in relation to this safe havens as follows:

“Significantly, the language of safe havens did not recur in later documents. Probably, the drafters were reminded of the Srebrenica massacre, which took place in the Bosnia war after UN troops failed to protect the inhabitants of an UN-declared safe haven. Indeed, the memory of Srebrenica was strikingly absent in the evolving debate.”¹⁷⁶

¹⁷⁴ Article 14 (1), Universal Declaration of Human Rights, 1948: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

¹⁷⁵ Loescher/ Milner In: *International Affairs*, Vol 79, 2003, pp. 583-617.

¹⁷⁶ Noll In: *European Journal of Migration and Law* Vol. 5, 2003, Issue 3, pp. 303-341.

The position of the UK government is that “there is no obligation under the 1951 Refugee Convention to process claims for asylum in the country of application.”

It would be argued that there is as well no provision in the Geneva Convention for Refugees and its travaux preparatoires empowering states to process asylum claims out of the territory an asylum seeker or a refugee seeks asylum or protection.

But there is a provision stipulating that everybody suffering from persecution can seek asylum in a country, which is democratic, peaceful and can grant effective protection. To strengthen this argument, the behaviour of states in relation to the Geneva Convention for Refugee and article 14 of Universal Declaration of Human Rights;

“Creates a presumption against transfer being implicitly authorised by the Refugee Convention, instead imposing an obligation on the state in which an asylum-seeker arrives to accord her protection.”¹⁷⁷

Nevertheless, this argument does not oblige an asylum seeker to seek refuge just in one state. If an asylum seeker does not find enough protection in a state he or she expected, he or she could continue to another state where enough protection could be granted. This argument also defends the fact that “there is no obligation under international law for a person to seek international protection at the first effective opportunity.”¹⁷⁸

¹⁷⁷ Amnesty International 2003, p. 20.

¹⁷⁸ Summary conclusion on the concept of “Effective Protection” in the context of Secondary Movement of Refugees and Asylum –Seekers, Lisbon Expert Roundtable, 9. and 10. December 2002, Organised by UNHCR and the Migration Policy Institute hosted by the Luso- American Foundation for Development.

The return of an asylum seeker will lead to the infringement of the principle of Non-refoulement, as set out in the 1951 Convention relating to the Status of Refugees.¹⁷⁹

The plain language¹⁸⁰ of the Geneva Convention of Refugees reverts how reluctant states are to respect far-reaching obligations to grant admission to, as opposed to non return of refugees. More to that those examining the 1951 Geneva Convention for Refugees and the 1967 Refugee Protocol concluded that states were unprepared to include in the Convention any article on admission, as opposed to non-return, of refugees.¹⁸¹

Using the above argument, it is clear that people who have already entered a country to seek for refuge are not supposed to be refouled. Meanwhile many international tools have broadened the scopes of article 33 of the Geneva Convention by explicitly admitting that the principal of non-refoulement includes admission at the frontiers.

The Council of Europe Resolution 67 (14), concludes that states should “ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.”¹⁸²

This position of The Council of Europe is supported by the United Nations. The 1967 United Nations Declaration on Territorial Asylum¹⁸³ stipulates, no one:

¹⁷⁹ Article 33 (1), Convention relating to the Status of Refugees, 1951: “No 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 on account of his race, religion, nationality, membership of a particular social group or political opinion.”

¹⁸⁰ Under Article 31(1) of the Vienna Convention on the Law of Treaties: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given the terms of the treaty in their context and in the light of its object and purpose.” 23 May 1969 UN. Doc A/CONF./39/27 (1969), entered into force on 27 January 1980, United Nations, Treaty Series, vol. 1155, p.331.

¹⁸¹ Goodwin-Gill G.S: The Refugee in International Law. Oxford, 2nd ed, 1996 , pp117-155,

¹⁸² Protocol Relating to the Status of Refugees. 31. January 1967, U.N.T.S.

No. 8791, Vol. 606, p. 267, entered into force 4 October 1967, in accordance with Article VIII

¹⁸³ Declaration on Territorial Asylum, G.A. Res. 2312, (XXII), U.N. GAOR Supp. (no. 16) at 81, U.N. Doc A/6716, 1967.

“Shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any state where he may be subjected to persecution.”¹⁸⁴

The transfer of asylum seekers to TPCs and RPAs according to the above arguments will lead to an abuse of the principle of non-refoulement and other international instruments. If the EU states could reflect a little bit back to 1985, a general agreement was reached amongst states which took part in the Consultations on the Arrivals of Asylum seekers and Refugees in Europe where it was demanded that persons who succeeded in crossing international boundaries to escape from severe internal upheavals and armed conflicts should not be returned against their will to areas where they may be exposed to danger.

Transfer procedures have in most cases breach human rights standards. In the case of forceful transfer, the refugees are mostly deprived of their rights due to the execution of force by the authorities that transfer them. This can be seen in the case of Lampedusa where it is acknowledged that:

“... The Italian response to the situation has been criticized, particularly after hundreds of migrants were immediately deported to Libya upon their arrival in Lampedusa.

“On Wednesday (10.06.04), Italian authorities marched 400 handcuffed men onto military planes at Lampedusa airport and flew them to Libya and Tunisia (...) expulsions were triggered after more than 600 people arrived in one night at Lampedusa from North Africa”¹⁸⁵

In the Australian “Pacific Solution”, the Special Armed Services (SAS), that stormed the ship MV Tampa to transfer the refugees to where their claims were to be processed, breached the rights of the asylum seekers. They prevented the refugees from

¹⁸⁴ Id. Article 3 (1)

¹⁸⁵ Brathwaite, Amy: The Future of Migration Control, Exploring the Issue of Extra-Territorial Migrant Reception Centres; The Case of Italy and Libya. Master Thesis, Aalborg University, Denmark, 10th September 2005.

communicating with the outside world, did not have the right to talk to a lawyer, information relating to their rights, status and destination.¹⁸⁶

The asylum seekers were never brought to court or listened to. This led a human rights organisation, The Victorian Council for Civil Liberties Inc (VCCL) and a solicitor, Mr. Eric Vadarlis to file a complaint in the court. In their complaint, they demanded the Respondent, which is the Australian Government to "... bring before the court the detainees referred to in the said affidavits and presently aboard the MV Tampa to be dealt with according to the law.

An order in the nature of mandamus to compel the First Respondents:
To bring the detainees into the migration-zone:
To inform the detainees of their rights under s. 194 of the Migration Act:
To receive and deal with the applications of the detainees for protection visa under section 45 of the Migration Act..."¹⁸⁷

3.3. Transfer in Conflict with "Safe Third State" Principle

Transfer is in conflict with the principle of "safe third country"¹⁸⁸ and its application. According to the UK New Vision for Refugees, it is a "step further on from the safe third country concept to extend the principle to artificially create internationally controlled areas that are Regional Protection Areas." But the TPCs and RPAs have got no relation to an asylum seeker who did not go through any of these countries harbouring the camps, the Refugee Convention does not make any provision for off-territory processing centre, neither does EU nor internal laws of individual EU states do allow states to transfer asylum seeker to other territories to process their claims.

It is seen that: "In the context of proposed transfers to a state with which an individual asylum-seeker has no prior connection there is little in the way of precedent, other than

¹⁸⁶ Amnesty International 2003, p. 21.

¹⁸⁷ Extract from the Minister for Immigration and Multicultural Affairs & Ors vs Eric Vadarlis, Victorian Council for Civil Liberties Incorporated & Ors, Federal Court of Australia, V 1007 & 1008 of 2001, Ruddock vs. Vadarlis, 2001, FCA 1329.

¹⁸⁸ "The "safe third country" principle stipulates that an asylum seeker by passing through a state found on the list as peaceful, democratic and respect human rights could and should file in the asylum claims as he or she was heading to a country of his or her choice.

in the most controversial of circumstances, and in relation to which there is no authoritative international jurisprudence”¹⁸⁹

Even the UNHCR, which is in support of externalisation of refugees declared that;

“An asylum seeker can resist return to a safe third country on the basis that she could, for example demonstrate that on the facts of her case, the third state would apply more restrictive criteria in determining her status than the state where the application has been presented.”¹⁹⁰

3.4. Mass Expulsion

It is always legitimate to process individual cases than to treat spontaneous arrivals as one case. People may come in one boat or vehicle, but their cases are different. The removal of asylum seekers en mass to be processed in the TPC or RPA on basis of nationality might generate issues relating to illegitimacy of mass expulsion. According to Gregor Noll:

“... Explicitly prohibited inter alia by article 4 of the Fourth Protocol to the European Convention of Human Rights (ECHR).¹⁹¹

To carry on a mass expulsion of migrants or asylum seekers, the government has to prove that it is for the public interest of the state. If this is not proven, then according to customary international law governing such cases, it will be proven that the government is functioning arbitrary. Richard Plender added that, “ the principles of customary international law governing such cases, the prohibition of arbitrary conduct and the rule of proportionality are likely to prove particularly apt; reasons must be advanced which could reasonably and properly lead the expelling state to the conclusion that its action is necessary in the public interest.”¹⁹²

¹⁸⁹ Amnesty International 2003, p. 21.

¹⁹⁰ See the case of T.I vs. UK, judgement of March 7 2000, req. 43844/98, unpublished; see UNHCR, Asylum Processes, Fair and Efficient Asylum Procedures, EC/GC/01/12, 31 May 2001.

¹⁹¹ Noll 2003, pp. 28-29.

¹⁹² Plender, Richard: International Migration Law, M. Nijhoff (Eds.), Dordrecht and Boston and Norwell, MA, U.S.A, 2 nd ed., 1988, p. 475.

3.5. Infringement of Effective Protection

Though until now, there is no standard definition of “Effective Protection”, there are certain elements one can use to provide a certain level of protection those tandems with international human right treaties and international law. The UK scheme and the Danish Memorandum carried proposals of what “effective protection” can signify. The UK scheme made reference to humanitarian assistance and protection against refoulement. Effective protection is addressed in different ways. For instance:

“It is clear that at a basic level there must be primary humanitarian assistance- food, shelter and health services- and there must be no risk of persecution or refoulement to the source country. In order for the UK and the rest of the EU to use Regional Protection Areas and TPCs, the notion of effective protection must also be sufficient to be compliant with Article 3 of ECHR. This means that there must be no risk of torture, inhuman or degrading treatment, either directly in the Protection Area itself or by removal from the Area.”¹⁹³

The Danish Memorandum states that “effective protection” should as a minimum comprise a guarantee against refoulement, physical protection and an appropriate level of social protection, placing emphasis on the importance of being able to agree a level of protection, which may be implemented in practice.”¹⁹⁴

Reverting to the above definitions of “effective protection”, the minimum standard relating to shelter and physical safety have been made mention of and are very important but these alone are not enough to the provision of international law and other human right treaties if the individual needs of those reallocated to RPAs and TPCs are not taken into consideration. In these regard, the two schemes failed to make mention of many issues.

As has been seen, the schemes do not address the issue of detention in the RPAs and TPCs. This means that the persons reallocated under this scheme would be detained and that would lead to the deprivation of their freedom and rights.

The issue of legal protection is lacking in this project. Persons sent to these centres and areas do not have any legal status before the law. In the case of T.I vs. the UK, the respondent government argued that the applicant was safe in Germany, inter alia

¹⁹³ UK: “New Vision for Refugees”. 2003, p. 14.

¹⁹⁴ Noll 2003, p. 16.

because the country was party to the ECHR and any violation of its Article 3 by the German authorities could be brought before the Strasbourg judges again.¹⁹⁵

In Lisbon in December 2002, a Roundtable discussion of Specialists to protect asylum seekers and refugees took place that reviewed the concept of “effective protection” in the context of secondary movements of asylum-seekers and refugees. The Roundtable publication was not a definition of “effective protection” but it raised many elements that are neither found in the UK scheme nor in the Danish Memorandum nor in the whole project of TPCs and RPAs coming from the EU states. These elements from Lisbon discussions are summarised as follows:

“This element encompasses the principle of non-refoulement including chain refoulement where the individual has a well-founded fear of persecution on one of the Convention grounds in the third state, as well as requiring protection from torture, and of the rights to life and freedom from arbitrary detention. There should also be agreement on the part of the third state to readmit, and the third state to which the person would be returned should normally be a party to the Refugee Convention and/or its Protocol. There should be access to fair and efficient procedures, unless the third state provides prima facie recognition of refugee status. An individual should have access to means of subsistence such as would be sufficient to maintain an adequate standard of living. There should be access to durable solutions, and account should be taken of special vulnerabilities.¹⁹⁶

“Effective Protection” should compose legal remedy, which will suspend the removal of an asylum seeker to a TPC or RPA. If this is not respected then removal can infringe freedoms and rights under Article 3 of the ECHR and also Article 13 which provides an effect legal remedy, added to, “where a grievance is an arguable one in terms of the ECHR.¹⁹⁷

Effective protection should constitute screening procedures where substantial examinations must be made. Though the Danish Memorandum challenges substantial

¹⁹⁵ Noll 2003, p. 25.

¹⁹⁶ Amnesty International 2003, p. 26.

¹⁹⁷ Noll 2003, p. 27.

examination when it states that the scheme includes “no substantial examination”¹⁹⁸ This provision of the Memorandum does not pay any consideration to minors and disabled people. This is recognised as “self contradictory” because there will always be certain category of people...who would never be sent to a transit area”¹⁹⁹

3.6. Discrimination

Meanwhile the UK scheme will affect transfer on the basis of “other status.” If manifestly unfounded claim is based on nationality, this will lead to discrimination. It is clearly stated that rights should not be interpreted differently between citizens and aliens.²⁰⁰

Revisiting this example, one will consider it discriminative if a boat of asylum seekers from a particular country lands on a shore of a country and the people are transferred to a TPC or RPA because it is considered that they come from a safe country meanwhile, another boat comes in with people from another nationality considered as an unsafe country and they are allowed to enter and their claims processed in their destination country. When one nationality is allowed to enter a country where the people have to enjoy good treatment, fair judgement, transparency, and another nationality sent to TPC or RPA, this will be tantamount to discrimination.

To prove if an infringement of the ECHR has occurred, the tests of comparability, justification and proportionality come in play:

“To access an alleged violation of Article 14 ECHR, the reasoning of the EctHR regularly passes a number of discernible stages. The court set out with a comparability test, deliberating whether the person claiming to be discriminated actually finds herself in a situation similar to that of the person she compares herself with.²⁰¹ If this is the case, the court proceeds to a justification test. The justification test, in turn, consists of two consecutive operations.²⁰² First the court scrutinises whether the aim pursued by the

¹⁹⁸ Danish Memorandum April 2004, p. 2.

¹⁹⁹ Noll 2003, p.26.

²⁰⁰ CCPR General comment 15, paragraph 2, The position of aliens under the Covenant, 11/04/86.

²⁰¹ see, inter alia EctHR, Case of Moustaquim vs. Belgium, Judgement of 18 February 1991, Series A 193, paragraph 49, where the EctHR denied that Article 14 ECHR was violated on grounds of lacking comparability.

²⁰² According to Noll, this two-step methodology was first expounded in the Belgium linguistic Case, Judgement of 23 July 1968, Series A 3.

difference in treatment is a legitimate one. If and only if this is the case, the Court ponders whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.”²⁰³

This chapter has given hints on the origin of the concept of extra territorial camps, the developments and some examples. It as well threw light on Tony Blair and the other EU government’s positions on camps. Most important is the analysis demonstrating the weaknesses found in this project. The next chapters will concentrate on my empirical research work in Ukraine, Libya and Germany. These three different concrete forms of camps will portray the structure and functions of other camps. Even if the whole concept was not realised as discussed by the EU governments, the main idea to institute extra-territorial camps was realised in one way or the other. The exclusionary function of the camps, which was one of the main objectives, is being realised. The map below demonstrates how the different countries are very far away but that has not limited the europeanisation of the whole migration system to compose the world to a microcosm. The europeanisation strategy does not respect borders that are why Ukraine and Libya have psychologically become part of the EU territory.

²⁰³ Noll 2003, pp. 27-28.

Fig. 3 Overview of the Geographical Location of the three Case Studies – Ukraine, Libya and Germany



Source: Google – Kartendaten, 2008 AND, PPWK, Basarsoft, Geocentre Consulting, Tele Atlas

Chapter IV. Ukraine: An Example of Transit Processing Centres

1. Background Knowledge

1.1. State Policies Regarding Asylum Seekers and Migrants

In her geographical position on the world map, Ukraine is found at the Eastern part of Europe and was “also the historic core of Russia, and its eastern regions are Russian-speaking. This aspect has a strong role in Russia's identity and geopolitical representations, and its importance is only increased by the fact that these same regions were one of the Soviet Union's industrial cores.”²⁰⁴ Due to the enlargement of the European Union, new borders have been created in the Eastern part of Europe and Ukraine is in contemporary time one of the countries sharing close borders with the EU states and is acting as a “Buffer Zone” to check migration into the EU states after its independence from the Former Soviet Union. The expansion of the EU border has made it that Ukraine shares borders with four European Union countries, these are Hungary, Poland, Romania and Slovakia. The new geographic position of Ukraine in Europe today has made her to become a hot spot for transit movement of asylum seekers and other migrants in search of effective protection. That is why Kerstin Zimmer writes that;”in this context Ukraine is of immense importance for the European Union (EU) and the member countries of the Schengen Agreement. Irregular migration is perceived as a “new security threat” and an attempt to regulate it by political means are being undertaken. As a result of EU enlargement, Ukraine is now a direct neighbour of the EU and is relevant as a safe third country.”²⁰⁵

Below is a map of Ukraine indicating where some of the camps in the Western part of Ukraine are found. The red spots on the map are from my initiative. Since Chop is not on the map, I have inserted a red spot to indicate the geographical location of Chop. And finally, the camp in Pavschino is indicated in Mokachevo since Pavschino is in Mokachevo.

²⁰⁴ Dr. Bordonaro, Federico: "Ukraine: Delicate Elections Will Have Deep International Significance". 24 March 2006. Accessed from the website of PINR Power and Interest News Report: http://www.pinr.com/report.php?ac=view_report&report_id=463&language_id=1 on March 30, 2008.

²⁰⁵ Dr. Zimmer, Kerstin: Ukraine: A Sending, Transit, and Destination Country for Migration. A Study Tour by the Institute for Sociology and the Center for Conflict Studies at Philipps-Universität Marburg to Ukraine in May and June 2007, p. 1.

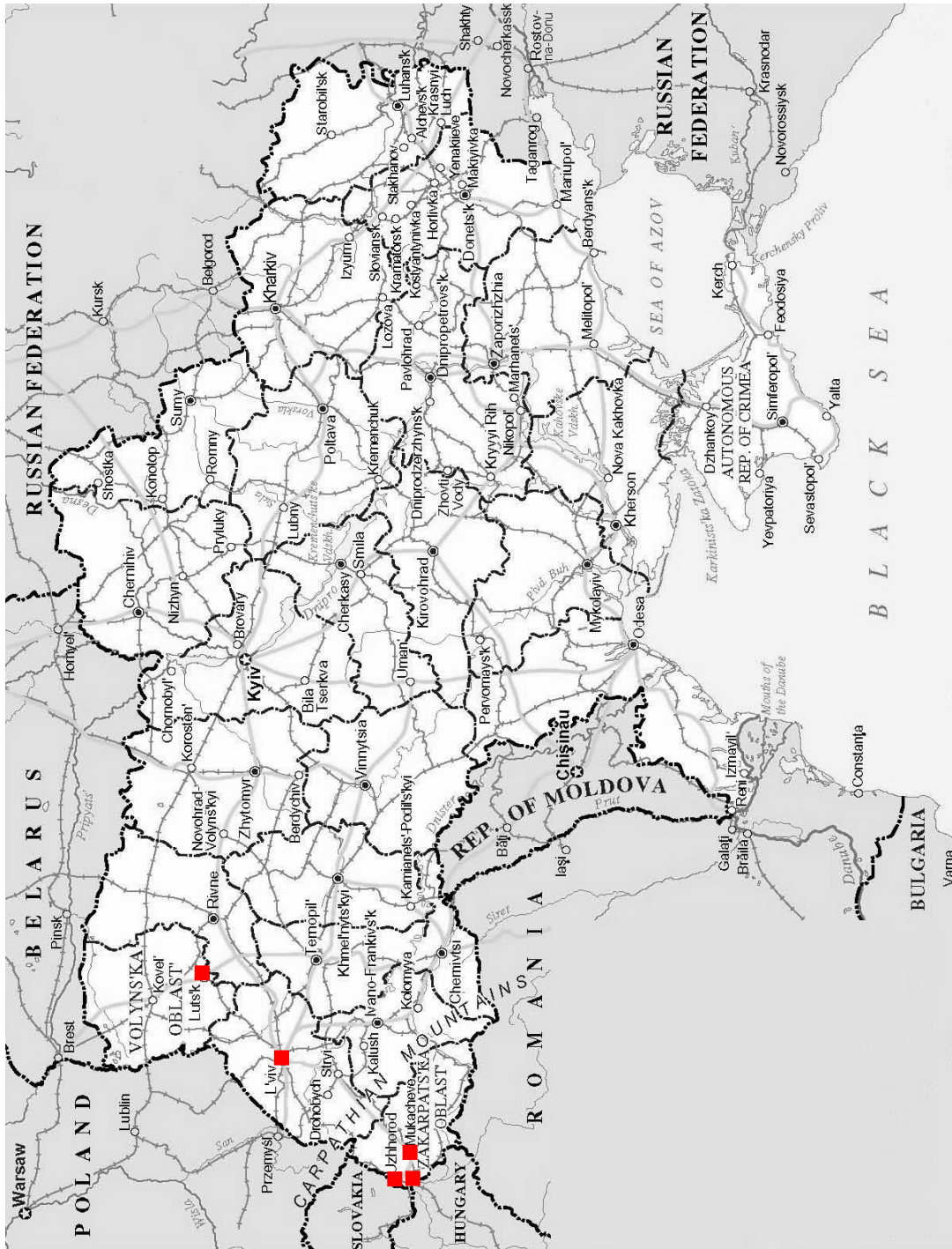


Fig. 4 Overview of the Camps in Western Ukraine ■

Source: Map No. 3773 Rev. 4 United Nations, January 2005, Department of Peacekeeping Operations Cartographic Section. The red spots indicating the camps are inserted by me.

Politically, when one speaks of Ukraine, she is still a country with a weak civil society originating from the “domination by oppressive regimes, planned famines, imprisonment of the intelligentsia, censorship of their organisations, cultural policies...the Tsarist and then the Soviet agricultural policies eventuated in a chasm between the rural and the urban communities that has persisted and has had consequences for contemporary

Ukraine society.”²⁰⁶ More to that there is a number of political conflicts in post-Soviet Ukraine. These factors have made Ukraine to be unstable and many of her citizens are emigrating. “Since the break up of the Soviet Union emigrants from the Ukraine to the West addressed new destination countries, many belonging to the European Union or becoming a part of it after May 2004.”²⁰⁷

Ukraine as a country had known emigration and immigration during the time of the then Soviet communist’s regime. Many other people else where in the then Soviet Union states entered Ukraine during this very period. In the 1960s on one side: “young Ukrainians, due to interesting opportunities found in Moscow, Kazakhstan and the Baltic states, moved out from Ukraine to build up a better future perspectives for their lives. On the other side, hundred of thousands from the other republics of the Soviet Union moved into the big cities of Ukraine. This raised the population growth between 1961 and 1989 to about 7,6 million. This was more than half of the total population growth rate of Ukrainians in their big cities.”²⁰⁸

Emigration still continues in recent days on a different phase because of the poor economic stance and lack of jobs. Many Ukrainians are emigrating to Western Europe and other countries in search of jobs. “Ukraine is the major source of migrants in many of the European Union Member States. During the 1990s and early 2000s, Ukraine’s sputtering economy and political instability contributed to rising emigration, especially to nearby Poland and Hungary, but also to other States such as Portugal, Turkey, Israel, Russia and Canada. Although estimates vary, approximately two to three million Ukrainian citizens are currently working abroad, most of them illegally, in construction, service, housekeeping, and agriculture industries. Ukrainian embassies report that

²⁰⁶ Wsevolod W. Isajw: Civil Society in Ukraine: Toward a Systematic Sociological Research Agenda. Paper/ Draft presented at the Workshop: Understanding the Transformation of Ukraine: Assessing What Has Been Learned, Devising a Research Agenda, Chair of Ukrainian Studies, University of Ottawa (Canada) 15-16 October 2004, p. 2-3.

Accessed from http://www.ukrainianstudies.uottawa.ca/pdf/P_Isajiw.pdf on the 28. March 2008.

²⁰⁷ Dietz Barbara: Migration policy challenges at the new Eastern borders of the enlarged European Union: The Ukraine Case. Working Papers Nr. 267. Osteuropa-Institut München July 2007, p.2.

²⁰⁸ Forschungsgesellschaft Flucht und Migration e.V. (Eds.): Hefte der Forschungsgesellschaft Flucht und Migration, Gegen die Festung Europa, Heft 5: Ukraine, Vor den Toren der Festung Europa. Die Vorverlagerung der Abschottungspolitik. Berlin 1997, p. 37.

300,000 Ukrainian citizens are working in Poland, 200,000 in Italy, approximately 200,000 in the Czech Republic, 150,000 in Portugal, 100,000 in Spain, 35,000 in Turkey, and 20,000 in the US. The largest number of Ukrainian workers abroad, about one million, are in the Russian Federation. Since 1992, 232,072 persons born in Ukraine have emigrated to the US.”²⁰⁹

“Between the Soviet census of 1989 and the Ukrainian census of 2001, Ukraine's population declined from 51,271,996 to 48,077,020, a loss of 3,194,976 people or 6.23% of the 1989 population.”²¹⁰

Furthermore, Ukraine is a country in transition from the then Soviet system to a capitalist system. This is a determinant factor that has characterised the country to be unable to have enough jobs for her citizens, has low income rates and as a country just gradually recovering from a nine years of economic recession, a real economic challenge that “the cumulative decline in the indicators have been the following: GDP-56%, industrial production-42%, agricultural production-39%, consumers goods production-56%, and capital investment-74%.”²¹¹ With these situations Ukraine has an inferior economic stance if compared to the EU states. Studies have proven that the high emigration into other countries from Ukraine is caused by low incomes and unemployment. According to the OstEuropa-Institute in München, “more than half of respondents (58%) named wages as motivation to migrate and (37%) referred to good employment chances abroad.”²¹² This low economic stance that cannot guarantee the citizens with good insurance policy, credit and capital, obliged the citizens to emigrate.

Since the collapse of the Soviet Union, the post Soviet Ukraine is not only experiencing emigration but also immigration. She has become a country very attractive to migrants from the former Soviet Union, Asia and the Middle East.

²⁰⁹ Demographics of Ukraine. From Wikipedia, the free encyclopedia. Based on: CIA World Factbook and 2001 Ukrainian Census. Online: http://en.wikipedia.org/wiki/Demographics_of_Ukraine, accessed on the 19.02.2008.

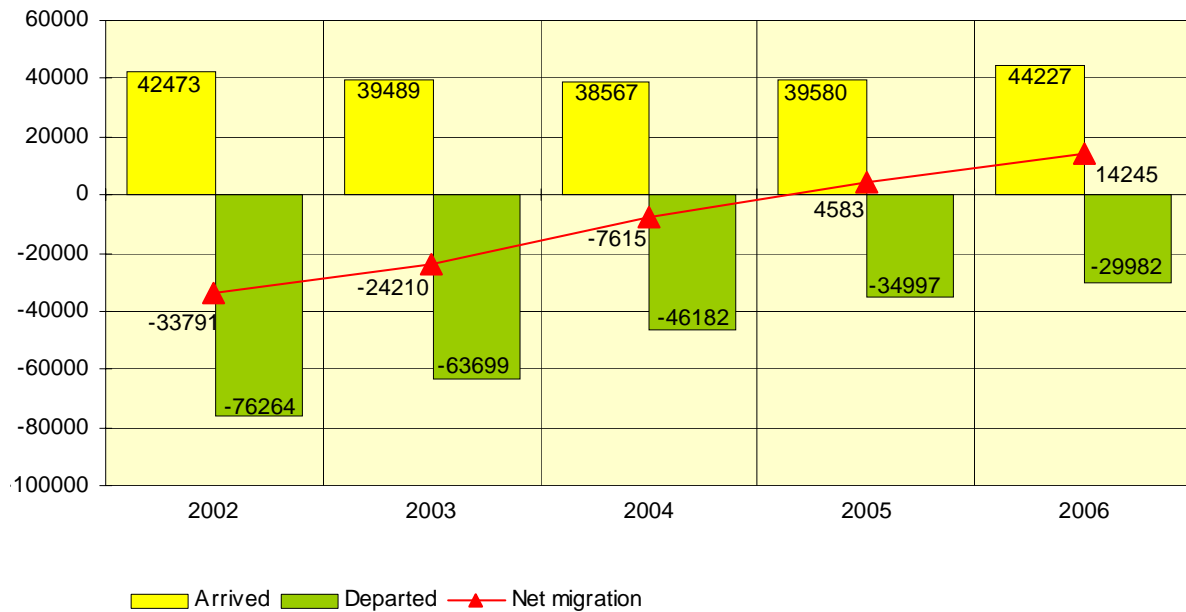
²¹⁰ Demographics of Ukraine. Online: http://en.wikipedia.org/wiki/Demographics_of_Ukraine, accessed on the 19.02.2008.

²¹¹ Dr. Segura, Edilberto L., former Head of the World Bank Mission in Ukraine: Ukraine: Economic Situation and Reforms In 2001. Developed for Sigma Bleyzer. Houston/ Kiev/ Kharkov April 2001. Accessed from http://www.sigmaybleyzer.com/files/Ec_situation_eng.pdf on the 29. March 2008.

²¹² Dietz: Working Papers Nr. 267. July 2007, p. 8.

Irina Pribytkova and Juris Gromovs in their publication wrote; “The emergence of a common frontier between Ukraine and European Union created an increase in transit illegal migration to the EU countries. According to unofficial estimates, around 0.5 million persons are staying illegally in the territory of Ukraine, most of them from the countries of South-East and Central Asia, as well as the Caucasus”.²¹³

Fig. 5 Registered Migration Trends in Ukraine, 2002-2006



Source: Pribytkova, Irina, and Gromovs, Juris: Migration Trends 2004-2006, Söderköping Process Countries, Kiev, Ukraine, May 2007, p.9.

This country, “in the early 1990s, became a destination country for migration. During 1992 and 1994, large numbers of people fleeing the conflicts in Abkhazia and

²¹³ Pribytkova, Irina and Gromovs, Juris: Migration Trends 2004-2006, Söderköping Process Countries, Kiev, Ukraine, May 2007, p.7. Online: www.soderkoping.org.ua, accessed on the 3rd November 2007.

Transdnistria in Georgia and Moldova sought refuge in Ukraine. Crimean Tartars, once the subject of repression and exile, were repatriated to Crimea".²¹⁴

Immigration to Ukraine from non-former Soviet countries, particularly countries in the Middle East and Asia, also increased during the same period.

Current estimates of the number of migrants in Ukraine ranges from 60.000 to 1.6 million, but the most common estimate is that there are 500.000 migrants in Ukraine".²¹⁵

"Ukrainian independence, as in other states of the former Soviet Union, was followed by increased movement of people both in and out of the country. Migration was prompted by a myriad of factors including access to labour markets, family reunification, and repatriation of those displaced during the Soviet period, and conflict. Today Ukraine, at the intersection of Europe and Asia, is very much at the cross roads of migration movements. While many people move to and through Ukraine in a regular manner, the country is also a transit country for those who move irregularly, without prior consent of the national authorities".²¹⁶

The Ukrainian border issues are being coordinated by the central government based in Kiev. The politician responsible for that has the rank of a minister since the border related issues have all of a sudden become very important to the country after the collapse of the then Soviet Union. This is a thing that did never exist during the time of the then Soviet Union. Now, even the citizens have to go through different difficult border regimes to leave and enter any of the then Soviet states. In order to perfectly control the Ukrainian borders to check irregular entries; the border officials are very strict.

"Like in many East European countries, the border officials are divided into two different police or rather military apparatus. These are, the State Committee for Border Security

²¹⁴ Human Rights Watch: Ukraine : On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union, Human Rights Watch Vol. 17 No 8 (D), 2005, p. 5. And Council of Europe, Parliamentary Assembly, Recommendation 1455 (2000): Repatriation and integration of the Tatars of Crimea, Online:<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EREC1455.htm>, accessed on the 3rd November 2007.

²¹⁵ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 5.

²¹⁶ Draft from the UNHCR: Strengthening Protection Capacity Project, Analysis of Gaps in Refugee Protection Capacity Ukraine, May 2006, p. 10.

Issues, which is responsible for the activities and deportations, and the Border Police, which is responsible to control the Green Borders. They search and arrest migrants irregularly crossing the borders.”²¹⁷

The control of regular and irregular migrants is the responsibilities of two different institutions. According to Irina Pribytkova and Juris Gromovs, “...the State Committee for Nationalities and Religion is in charge of activities in the field of regular migration. In turn, the ministry of internal affairs of Ukraine bears responsibility for managing, preventing and combating illegal migration.”²¹⁸

Despite all the new control mechanisms instituted by the Border police officers, it is still very difficult to control migration. One of the chives of the State Committee for Border Protection, Alex Golovatsch, once said; “For us, at the controls, there are two different arts of migration, a half legal and an illegal. We have more fears on the half legal category. These are the foreigners who enter Ukraine legally, for instance, tourists, participants in exchange programmes, students or business travellers, these people, during their legal stay in Ukraine find out possibilities on how to travel to West Europe illegally. They are very difficult to control, because they come here legally. It is impossible to prove as they come into the country that among them is going to continue to the West. The second category is defined illegal asylum seekers or foreigners. Migrants coming from South East Asia, Pakistan, Vietnam, China and other states. From the beginning to the end of their stay in Ukraine, are being “taken care” of by special structures.”²¹⁹

Specially, since 2004, as already noted, as the EU states externalised its boundaries to cover Hungary, Poland and Slovakia, this made Ukraine to become a strategic country that other migrants use to enter the EU states. Ukraine shares borders with Hungary and Slovakia in the West and Poland in North West. Formerly migration through these borders was possible but today, due to the influence of the EU states, tight control

²¹⁷ Forschungsgesellschaft Flucht und Migration e.V.: Gegen die Festung Europa, Heft 5, Berlin, 1997, p.43.

²¹⁸ Pribytkova/ Gromovs May 2007, p. 7.

Online: www.soderkoping.org.ua, accessed on the 3rd November 2007.

²¹⁹ Forschungsgesellschaft Flucht und Migration e.V.: Gegen die Festung Europa, Heft 5, Berlin, 1997, p.64.

mechanisms have been instituted to the extent that migration has become difficult except in cases like having a genuine visa or bribery and corruption. In 1996, one of the representatives of the visa section of the ministry of external affairs said in the construction of Ukrainian borders structures that:

“Ukraine as a Buffer zone between Europe and the “Third World” could become a “depot for illegal migrants” threat of drugs, mafia and terror from the Middle East and Africa as the greatest danger that will go over the Ukrainian borders into the country.”²²⁰

According to the UNHCR, the European Union manages migration in Ukraine through CARITAS Austria. Mr. Wolfgang Müller confirmed this statement to me, the then director of migration management CARITAS Austria based in Mokachivo, in Ukraine. He said:

“Our duties are to see that the camps are in good states. There should be no congestion, have good sanitation, and we do conduct trainings with judges and lawyers to be able to handle asylum issues. We also see into it that the military officers responsible for the camps respect the human rights of the detainees. We are going to organise some of our training session in Autumn.”²²¹

Meanwhile there is also the International Organisation for Migration (IOM) that is funded by EU in the domain of Migration Management and human trafficking. The field of IOM covers the establishment of detention centres for prospective asylum seekers, refugees and migrants; the return of persons who are not in need of international protection and to facilitate the resettlement of selected refugees.

To build up the democratisation and reform processes in Ukraine as well, the EU states are the biggest financial donors. Total EU funding for Ukraine from 1991 to 2004, amounted to 1 billion €. This amount is supplemented by contributions from member states which reached 157 million € in the period 1996- 1999.”²²²

²²⁰ Forschungsgesellschaft Flucht und Migration e.V.: Gegen die Festung Europa, Heft 5. Berlin, 1997, p.44.

²²¹ Interview with Mr. Wolfgang Müller, former director of Migration Management, CARITAS Austria. This interview was conducted on the 13.05.2006 in Mokachivo, Ukraine.

²²² Commission Staff Working Paper, European Neighbourhood Policy, Country Report, Brussels 12.05.2004, SEC (2004) 566, (COM 2004)373 final

Ukraine has been receiving migrants and asylum seekers returned from EU states. “An increasing number of migrants and failed asylum seekers are returned to Ukraine from EU. These returns mostly from Poland and Slovakia are based on bilateral return agreements concluded in 1993, prior to those countries entry into the EU. But the trend is being increased by EU asylum and migration management policies that shift the burden of processing and hosting migrants and asylum seekers from the EU to countries on its borders“.²²³

To facilitate the return of migrants, asylum seekers and failed asylum seekers, there is the “Readmission Agreement” signed between Ukraine and the EU states. Readmission Agreement creates a mechanism to facilitate the return of migrants and asylum seekers to countries outside the borders of the EU.²²⁴

International Centre confirmed this position for Policy Studies in (Kiev, Ukraine), Institute for Public Affairs (Warsaw, Poland), when it said,

“One of the main objectives of Readmission Treaty is to establish a procedure for rapid, efficient identification and safe, organised deportation of individuals who do not meet the requirements for entering and staying on the territory of Ukraine or EU Member states, as well for the regulation of transit as part of such cooperation”²²⁵

Ukraine has concluded readmission agreements with many countries including Bulgaria, Georgia, Hungary, Latvia, Lithuania, Moldova, Poland Slovakia, Turkmenistan and Uzbekistan. None of these agreements refers directly to asylum-seekers or refugees, however, in all but the agreement with Uzbekistan, readmission is expressly prohibited where the person will be subjected to inhuman or degrading treatment, the death penalty or persecution on 1951 Refugee Convention grounds in the country of destination or, in some cases, the country of transit”.²²⁶

²²³ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 6.

²²⁴ See: Official Journal of the European Union: Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union. C 142, 14.June 2002, Online: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2002:142:SOM:EN:HTML>, accessed on the 3rd November 2007.

²²⁵ International Centre for Policy Studies (Kyiv, Ukraine)/ Institute for Public Affairs (Warsaw, Poland); Ukraine’s policy to control illegal migration. Kyiv 2006, p. 16.

²²⁶ UNHCR: Draft Ukraine May 2006, p. 10.

In 1998, Ukraine ratified, with reservations, an agreement on the Cooperation between Commonwealth Independent States (CIS) in fighting irregular Migration, which regulates, amongst other things, issues related to expulsion and hand-over of irregular migrants. The Agreement does not cover persons who arrived for the purpose of seeking asylum, if their application was submitted in accordance with the procedure established by law. However, as it also stipulates that the hand-over of irregular migrants should be processed on the basis of separate bilateral agreements, the CIS agreement is of little direct practical use.²²⁷

Though some top officials are claiming that they have not given their consent to have camps in Ukraine and that Ukraine is a sovereign state, the recent cooperation between Ukraine and the EU states on issues like asylum and migration, justice, home affairs are focused on a readmission agreement. Dialogue on a readmission agreement has already started under the themes-Partnership and Cooperation Agreement and the EU Justice and Home Affairs Plan. The EU is also considering allowing a visa free entry to Ukrainians.

1.2. Legal Framework

As Ukraine became an independent state due to the collapse of the Soviet Union, Ukraine as well became an attractive country for migrants and asylum seekers. In the first half of 2005, Ukraine border guards arrested 6,481 undocumented migrants and 4,343 undocumented migrants were refused entry at the frontiers.²²⁸

This increase of migrants and asylum seekers has made the country to institute a migration law. This migration law is a catalyst to regulate, manage and to stop migrants and asylum seekers into Ukraine and to render conditions very difficult for these classes of people. The first law was instituted in 1991 known as the Law on Ukrainian

²²⁷ UNHCR: Draft Ukraine May 2006, p. 10.

²²⁸ BBC Monitoring Ukraine and Baltics: "Ukraine catches 6,500 illegal migrants in first half of 2005." BBC, 24 June 2005, Source: UNIAN news agency.

Citizenship. This law facilitated the repatriation of Ukrainian nationals undergoing repression or on exile during the era of the Soviet Union.²²⁹

In December 24 1993, Ukraine adopted the Law on Refugees and ten years later she ratified the 1951 Geneva Convention and its 1967 Protocol.²³⁰ The Ukrainian Law on Refugees covers the basic provision of the Convention of 1951 nevertheless has some weaknesses; it does not contain details of an asylum procedure. In 1994, Ukraine instituted a law on the Legal Status of Aliens, which provided to foreign nations a legitimate procedure to settle in Ukraine and for those who are prospective asylum seekers, to apply for asylum or refugee status.²³¹

Ukraine has ratified a number of „International instruments“²³² guaranteeing rights and respect of each and everyone living in the country. This has led to the amendment of the different laws like citizenship law, refugee law and aliens status law.

According to the amended Article 9 of the Ukrainian Law on refugees states, an asylum seeker is to seek asylum “without delay” as soon as the person steps into Ukrainian territory. This article was amended in May 2005. Before this date, an asylum seeker was expected to file in his or her claim within three working days if the person entered the country illegally meanwhile those who entered legally were expected to file in their claims in the space of five working days. If an asylum seeker does not respect the delay, no matter how genuine the claim is it will be rejected.

Article 12 of the amended Law on Refugees deals with manifestly unfounded claim procedure. It empowers competent judges to reject asylum claims, which are manifestly

²²⁹ Law on Citizenship of Ukraine, *Oficijnyj Visnyk Ukrainy*, 1991, No. 50, p. 701. Over 250,000 Crimean Tatars, Bulgars, Armenians, and Greeks returned to Crimea. Olena Malynovska, *Migration and Migration Policy in Ukraine*, In: *Migration Policies and EU Enlargement – the Case of Eastern and Central Europe*, OECD.

²³⁰ Law on Refugees, *Oficijnyj Visnyk Ukrainy*, 1994, No. 16, p. 90. Amended in 2002 to ratify the Convention relating to the Status of Refugees, 189 U.N.T.S. 150, adopted 28 July 1951, entered into force 22 April 1954 and its 1967 Optional Protocol.

²³¹ Law on Legal Status of Aliens, *Oficijnyj Visnyk Ukrainy*, 1994, No. 23, p. 161, Article 3: immigration and temporary stay of aliens, Article 4: granting of asylum, Article 5: acquisition of refugee status.

²³² Ukraine ratified the Geneva Convention in 1994 and amended in 2002. Readmission Agreement with the EU in October 2006.

unfounded before their formal registration as asylum seekers. The delay to conduct the interview after the application was registered is fifteen days.²³³

Ukraine continues to create new laws due to the nature in which migrants use the country to either cross over into the EU states or live in the country. This has led to:

“The Law “On Immigration adopted by the parliament of Ukraine in June 2001, is of fundamental significance to the regulation of migration processes in the country. In particular, it establishes procedures and conditions for immigration into Ukraine of foreign nationals and stateless persons, assigns quotas of immigrants into Ukraine, outline the competencies of agencies responsible for regulating immigration processes in Ukraine, and, importantly, provides the definition of the words immigration and immigrants.”²³⁴

The state border guard authorities execute expulsion of detainees apprehended at the frontiers who attempted to cross or already found in Ukraine. Meanwhile other cases of this procedure are the issue of the ministry of the interior. The process of removal expulsion of foreign nationals and stateless persons is:

“Regulated by the Instruction on the procedures of interaction between the authorities of the State Border Guards Service of Ukraine and the departments of Internal Affairs of Ukraine in transferring foreign nationals and stateless persons detained by these agencies approved by the Order # 742/1090 of the Administration of the State Border Guard Service of Ukraine and the Ministry of Interior of Ukraine dated 15 October 2004”²³⁵

2. Access to Asylum Procedure in Ukraine

The State Committee, through the Migration Service is the main body responsible to issue documents to asylum seekers and refugees to confirm their status. An adult from

²³³ “Parliament Extends Period for Consideration of Refugee Applications to 15 Days.” In: Human Rights Watch Vol. 17 No 8 (D), 2005, p.29-30.

Online: <http://www.hrw.org/reports/2005/ukraine1105/4.htm> , retrieved on 19 November 2007.

²³⁴ Pribytkova/ Gromovs May 2007, p. 7.

Online: www.soderkoping.org.ua, accessed on the 3rd November 2007.

²³⁵ Pribytkova/ Gromovs May 2007, p. 8.

Online: www.soderkoping.org.ua, accessed on the 3rd November 2007.

18 years is expected to file his or her asylum claims alone and is registered by the Migration Services. For children under 18 years, they can file in their claims when there is an adult above 18 years. That can either be the father; mother or an unaccompanied child must have an official person to submit the child's claim on behalf of the child.

There are seven different types of status for asylum seekers and refugees. These statuses are very important because they identify the different category of migrants and refugees in this country. If an asylum seeker does not have any of the documents mentioned below because it may be they have been expired or the person never acquired it, they will face frequent police harassment. These documents are:

Receipt of asylum application by Migration Services

Application has been accepted for consideration in the Refugees Status Determination (RSD) procedure

An appeal of a negative decision has been submitted

A positive status decision rendered (refugee certificate)

Permission to exit and enter Ukraine (travel document)

An appeal of a negative decision has been registered with the state committee

The court is notified of an appeal²³⁶

“The Hebrews Immigrants Aid Society”²³⁷ Ukraine said, if the above mentioned documents expires, “the asylum seekers have to return the document and get a new one. In order to obtain a new document or be constituted, the asylum seekers have to wait for about a month. During this waiting period, asylum seekers do not carry any document to identify them as people already living in the country. This makes them vulnerable to police harassment. Due to this administrative lacuna, the UNHCR Ukraine

²³⁶ UNHCR: Draft Ukraine May 2006, p. 25.

²³⁷ HIAS is a professional non-profit agency of the American Jewish community specialising in the area of international migration. Established more than 120 years ago, HIAS is one of the world's oldest NGOs in this field and has accumulated substantial expertise in many legal and operational aspects of international migration. HIAS is headquartered in New York and has offices in eight countries of the world. In 2001, HIAS established a representative office in Kyiv, Ukraine, where it implements several programmes, including the Legal Protection Services programme under a co-operative agreement with UNHCR. The programme provides legal counselling and assistance to asylum seekers and refugees in Kyiv and the Kyiv region, who constitute approximately 50 percent of all asylum seekers and refugees in Ukraine. In 2003, HIAS was introduced to the Söderköping process. It also acts as a member of the network of experts. Obtained from (<http://soderkoping.org.ua/page5997.html>) accessed on the 23.10.2007.

has taken the initiative to provide the asylum seekers with certain documents to identify them, but the police usually does not recognise the documents from UNHCR.²³⁸

Since Ukraine became an attractive route for migrants irregularly crossing to the EU states, many of them are caught and detained by the State Border Service (border guards).

Access to asylum in Ukraine and the treatment of asylum seekers depend on if an asylum applicant entered the territory legally or irregularly. Before May 2005, as already said, Article 9 of the Law on Refugees in Ukraine provided the possibility for asylum seekers who entered the country irregularly to seek asylum within the duration of three working days, and for those who entered the country legally could seek asylum within five working days. If these deadlines provided by the law are not respected, the claims for asylum will be rejected by the Ukrainian migration service. This non-respect of the stipulated deadlines led to a high rejection of asylum seekers claims.

These rejections because of irregular procedure led international organisations like UNHCR and its partners based in the different regions of Ukraine to dialogue with the Ukrainian government, which finally led to the amendment of article 9 of the Ukrainian law on Refugees. In May 2005, due to the amendment, the specified words like “during three working days” were changed to “without delay”²³⁹. This law amendment did not cover all the countries nationals seeking asylum in Ukraine.

“More different instructions to the border service have led to inconsistent practice with respect to the latter category while different standards of treatment for asylum seekers from certain countries, and in particular Chechnya and others from the Russian Federation have led to their being denied admission outright to the territory. It is always easy to deport the Chechnya’s because their embassy is found in Ukraine that makes it possible for the Ukrainian government to obtain a travelling certificate. That is not the case with other nationals from different countries.”²⁴⁰

In an interview with an asylum seeker from Chechnya, it was said that:

²³⁸ Interview with Emmanuel Kanavanga working with HIAS Ukraine on the 24.05.2006 in Kiev

²³⁹ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 42.

²⁴⁰ UNHCR: Draft Ukraine May 2006, p. 12.

“When we from Chechnya are apprehended by the border guards, they do not want to give us the possibility to file in our asylum claims. We are always beaten, maltreated to force us leave the Ukrainian territory. We do not find that justified. We believe it is the right of every individual suffering from persecution to seek asylum where he or she considers safe. We expect a fair access to the Ukrainian asylum procedure like other nationals from other countries. We are inviting the international community to look into the poor treatment Chechnya’s suffer in Ukraine.”²⁴¹

In the amended law on Refugees, the authorities are supposed to conduct interviews within fifteen days from the day the applicant deposited his or her claims for asylum. Article 12 stipulates that the authorities reject the asylum seekers with manifestly unfounded claims, before they can obtain the status of asylum seekers. Usually, when asylum seekers are rejected, they are further detained meanwhile the authorities seek to obtain necessary documents to facilitate their deportation. If these documents are not got, failed asylum seekers are kept in the detention camps for a very long while.

2.1. Ukraine Government’s System

An asylum seeker that seeks asylum in a detention camp, is supposed to wait while the asylum application is transferred and processed in the Migration Service within 24 hours. During this delay, an ID on admission must be issued within a period of 48 hours while waiting the decision of the asylum claim. In normal cases, when the ID is issued, this will lead to the release of the asylum seeker from a detention camp. But it is usually not the situation:

“This provision, however, does not accord with another Boarder Service Instruction on Procedure for Detention which permits release from detention only when the Migration Service issues an “ID on further Admission”, once the applicant has passed a determination that the claim is not manifestly unfounded or an abuse of process.”²⁴²

²⁴¹ Interview with NN from Chechnya living in Ukraine without official documents on the 23 May 2006 in Kiev. He is afraid to confront the immigration officer because as he said, deportation will be the next step to follow.

²⁴² UNHCR: Draft Ukraine May 2006, p. 12.

The amended Article 9 of the Ukrainian Law on Refugees states that border guards are expected to set free any detainee who has made an asylum claim. This very Article 9 stipulates that any person who crosses the Ukrainian borders to seek asylum should not be considered as a criminal.

Though Article 9 prohibits somebody after filing for asylum to be kept in detention camp, in practice, it is the contrary. Many people to whom I spoke said even after filing for asylum, they were never released.

“Ge. Boris Marchenko, the head of the Ukrainian Border Guard Service said... Even if they already applied (lodged an asylum application), we (the Border Guard Service) still keep them because the migration service doesn’t have anywhere to accommodate them.”²⁴³

Meanwhile, in my interview with V, a border guard in Lutsk, he said, “ we keep the people for a long time because we try to identify them. If their nationalities are identified, we release them but if not they have to stay longer in the detention camps.”²⁴⁴

Border Guards are expected to transfer asylum applications filed by detainees to the Regional Migration Service office as stated in Articles 8 and 9 of the Law on Refugees, usually it is not the case. Border guards and police officers either refuse to accept asylum cases or if they accept the applicant, they delay in transferring the files or claims to the Migration Service.

“Detainees, UNHCR and lawyers told ... that in some facilities (particularly the Pavschino centre for men) the transfer of applications depends on the good will of the border guard officials or the payment of bribes. A human rights lawyer said that the border guards frequently fail to forward applications and then claim that the applications were “lost.” How can you have forty-two applications lost?”²⁴⁵

²⁴³ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 27.

²⁴⁴ Interview with V, a military officer at Lutsk facility, on the 12.05 2006 in Lutsk

²⁴⁵ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 27.

The difficulties faced by the asylum seekers are as well part of the duties of the Ministry of the Interior which exercises a lot of authority to prevent asylum claims to be processed or access of an asylum seeker to the Ukrainian territory.

“The Ministry of the Interior also has authority to restrict access to the territory, applicants apprehended by the Ministry of the Interior have even more difficulty in accessing asylum procedures than those in the custody of the Border Services.²⁴⁶

From the above-mentioned examples, access into asylum system in Ukraine is complicated and difficult. It takes a very long time because of the unwilling and on the other side, a lack of knowledge of the officials who have never known how to deal with the Western asylum issues during the era of the then Soviet Union. The registration of asylum seekers is not in respect of international standards reflected in the Geneva Convention of 1951. A case without complication in the Migration Service, takes more than a year to obtain a final decision. If the case goes through an appeal stage, it usually lasts very long and that makes the applicant to live in an atmosphere of uncertainty and continuous harassment from the law enforcement officers. Some of the reasons for these weaknesses are,

“Absence of sufficient number of qualified staff and lack of motivation of available registration staff due to their low salaries. There have also been allegations of corruption among MS staff (especially in Kiev City) and these have contributed to a general atmosphere of inefficiency and a lack of sense of service to asylum-seekers among government employees²⁴⁷.

Due to all these weaknesses, the UNHCR Ukraine came up with what could be described as the other possibility which tandems with international standards.

2.2. The UNHCR Ukraine Possibility to Asylum

In order to correct some of the failures of the Ukrainian asylum system, the UNHCR Ukraine came up with a system, which is in conformity with the international standards to seek asylum. These services are done through other humanitarian bodies connected to

²⁴⁶ UNHCR: Draft Ukraine May 2006, p. 13.

²⁴⁷ UNHCR: Draft Ukraine May 2006, p. 14.

UNHCR Ukraine like “Hebrews Immigrant Aid Society (HIAS). One of the representatives in HIAS said,

“We are linked to the UNHCR and we carry on duties for the UNHCR. We provide asylum seekers with legal assistance to apply for a refugee status in Kiev, fill in questionnaire; application form and we screen those who fulfil the nexus of the Geneva Convention. After our selection, we send our findings to the UNHCR where decisions are taken of who can be an asylum seeker. We usually decide using the nexus of the Geneva Convention. Any client who satisfies it is positively recognised.”²⁴⁸

HIAS has five legal councillors who conduct Refugees Status Determination to determine if the asylum seeker fulfils the nexus of UNHCR. The files are sent to the UNHCR, the beneficiaries if accepted, will receive monthly social assistance from UNHCR to the tune of \$45 dollars. The UNHCR also writes letters to testify that those selected asylum seekers have genuine claims to be considered as asylum seekers or refugees. As stated, “in 2003, UNHCR began issuing letters attesting that the bearer had a pending claim for asylum.”²⁴⁹

The UNHCR has introduced a system to register all the asylum seekers who report themselves to their NGO partners in Kiev and other places in order to keep an accurate record of the number of asylum seekers and refugees found in Ukraine. This lead to the update of information, documenting new arrivals, marriages, departures, deaths, birth and family reunion.

In May 2003, the UNHCR introduced a programme to resettle refugees to other countries where effective protection could be got. According to Lorian, an asylum seeker from Africa who was selected in this programme, “I have been sent to America, I have to leave on the 6th of June this year. Other friends are transferred to Sweden, Canada, and Australia etc.”²⁵⁰

²⁴⁸ Interview with Emmanuel Kanavanga working with HIAS Ukraine on the 24.05.2006 in Kiev

²⁴⁹ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 32.

²⁵⁰ Interview with Lorian, an asylum seeker from Democratic Republic of Congo who is now resettled in USA. The Interview was on the 24.05.2006 in Kiev.

Despite the work of the UNHCR, it is still not easy with the law enforcement officers in Ukraine who tend not to accept most of the works and documents of the UNHCR. And though the UNHCR is able to process the asylum claims of some of their clients, there are so many asylum seekers, refugees and migrants detained in camps found all over the country that makes it usually difficult for the UNHCR to have easy entrance or reach.

3. The Socio-Economic Conditions in Ukraine Detention Camps

From an intensive research in the different camps, it is concluded that the migrants and asylum seekers are arbitrary detained in Ukraine. This could be seen in the main forms of exclusion faced by asylum seekers, migrants and refugees in areas relating to housing, health, education, work, shopping system, lack of freedom of movement, lack of basic procedural rights to asylum, communication with the outside world.

As a direct consequence, there is the failure of the mainstream public services to meet and reflect the needs and interests of asylum seekers. A direct reaction is exclusion and discrimination in the public and private sectors. And the search of the fastest means to deport them out from the Ukrainian territory.

3.1. Accommodation



Fig. 6-8 Overview of the Living Conditions in the Camp of Pavschino, 2008

Source: Klenks Watchblog: Europas neuer Zaun: Photos Heribert Corn, 11.04.2008.

All the detention centres visited are found in military camps and controlled by border guards. In the camp in Pavschino (Pausching in German,) where men are kept, it is

about five kilometres from the city and about two kilometres to drive in a forest. At the beginning of the forest to the camp is a signboard on it is written “the forest of Mokachevo”. After a long drive one meets an isolated yellow building that lodge the migrants and asylum seekers. This camp in the forest of Mokachevo is surrounded at the highest height with barbwire like in a high security prison to prevent asylum seekers and migrants from escaping.

These detention centres are not easily accessible. One needs a special permission from a superior authority or uses the shortest ugly method, bribe the border guards and get in. The detention centres do not meet up with basic international law standards. In the camps, the standards are base and an abuse to the human rights of all those living inside. In an interview with Solomon from Liberia in the detention camp in Pavschino, he complained of always falling sick because the standards of living inside the camp are unbearable.²⁵¹

These substandard detention conditions are found in all the other camps. In Lutsk, the blankets used by the detainees have not been washed for over a year. As different detainees come and go, they are obliged to use them with the stinking smell generating from the bed covers.²⁵²

In Uzhhorod, the detainees are allowed only fifteen minutes daily out of their rooms to obtain fresh air and see natural light. Mams a former detainee in this facility said,

“ I was permitted just for fifteen minutes every day to have fresh air and direct natural light. It came to a time I could not bear it and had to strike. Due to the strike they took me to a small room of about one square metre without any light and locked me up for some days.”²⁵³

²⁵¹ Interview with Solomon from Liberia on the 10.05.2006 in Pavschino

²⁵² Interview with Mams from Democratic Republic of Congo, on the 23.05.2006 in Kiev, one day after his release from the detention centre Lutsk. Mams is one of the asylum seekers living today in Ukraine who has tried many times to cross into the EU but was always apprehended. He has been detained to at least four of the detention units in Ukraine.

²⁵³ Interview with Mams five months after his release from Uzhhorod on the 25.05.2006 in Kiev

In Pavschino detention facility, the detainees have the possibility to come out and walk within the fence but there is no possibility for them to exercise since there is no real spot ground allocated for that. Solomon in the centre said,

“I feel very heavy and lazy because of lack of sports. I wish I could play either football, table tennis or do some thing else as sports to refresh my memory and upgrade my health.”²⁵⁴

In Kiev and Lviv vagabonds' centre and Lviv detention camp, the detainees had no possibility to do exercise or to obtain fresh air. They were locked up and could be allowed from their cells when they want to go to toilet. One of the detainees in Kiev vagabonds' centre complained, “It is not possible to walk or to exercise, even the toilet is in the room.”²⁵⁵ In an interview with the border guards, they said,

“There is no practice to go out and exercise because we (the guards) do not have the personnel to supervise them, but they (the detainees) take walks from bath to the room and to the X-ray device room (during the medical examination).”²⁵⁶

At times humanitarian organisations visit the camps to find out the living conditions of the detainees. Some detainees said it is always difficult to describe vividly how they live since the inspection teams are usually accompanied by at least a border guard. The person is usually a usually a colonel.

I observed how a team was inspecting the camp in Pavschino with CARITAS Austria. On this day, 12.05.2006 with the then director of migration management CARITAS, two other people in the presence of a colonel. The presence of the colonel always limits the vivid information the detainees should have given out. It is some sort of strategy to frighten the detainees not to be able to narrate the poor living conditions they experience daily in case of interviews with the detainees. This system to control whatever information the detainees give out has made it difficult for detainees to vividly describe their poor living situation because of fear of deportation or maltreatment when the visitors

²⁵⁴ Interview with Solomon from Liberia on the 10.05.2006 in Pavschino

²⁵⁵ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 48.

²⁵⁶ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 48.

are gone. Mams has been in three of the detention centres in Ukraine- Pavschino, Uzhhorod and Lutsk said:

“In Pavschino, the situation was very intimate that there was some sort of sexual misbehaviour. One at times touches the other either knowingly or unknowingly but in an unusual manner that is not tolerated. It’s some sort of unauthorised sexual practices. These are things that cannot happen in non-crowded rooms since there is a sort of gap between people. There was no time we could have the space to play normal games since the rooms were very tight. Most of the times, one is forced to listen to all sort of conversation. And at times, one does not understand a language the other roommates are using to communicate but one is forced to pay attention. We were packed full with people from different continents.”²⁵⁷

“We are always afraid to speak when visitors come to us in the company of the colonel. Though some of us try to speak we could not really describe the problems as we experience daily because of fear of maltreatment or deportation when the visitors are gone”.²⁵⁸

In Lutsk, the detention centre is not in the forest but inside a military camp located almost at the outskirts of the city, to reach the detention centre, one has to go through two fences, the first one is on the road with a big iron door, and a small entrance where a border guard is always sitting, in this fence, there is another fence which surrounds the detention centre. The second fence is constructed with concrete like the first one, the upper part of the fence is covered with barbed wire and the entrance to this section is locked with a big iron lock.

In Pavschino and Lutsk detainees do not have the opportunity to listen to the radio or watch TV because they are locked up behind close bars. There is no library, or other reading facilities like play ground that can facilitate the task for them to relax.

Still in Pavschino, in relation to the heating situation in winter, Mams said; “the heaters were not functioning well and on one of the windows was a very big hole that cold used

²⁵⁷ Interview with Mams four months after his release from Pavschino on the 25.05.2006 in Kiev

²⁵⁸ Interview with Mams four months after his release from Pavschino on the 25.05.2006 in Kiev

to pass through. It was difficult for us to sleep since the room was very cold²⁵⁹. According to his expression, one could see the cold. Further more there were some people who did not have blankets due to shortage.

Feeding in Detention Camps

The food given to the detainees falls short of a balanced diet. Mams said the only food is Kasha (buckwheat.) In Pavschino, the kitchen is about twenty metres from their rooms and they have to carry their food to their rooms in an aluminium plate. As the food is very hot, they usually throw almost everything since aluminium conducts heat, which makes it difficult to carry. The food is not enough to sustain their hunger. He said, “ We did not have any other choice than to stay with hunger.”²⁶⁰

To confirm Mams version, “ a Chechen who had been detained in Chop border-guard detention said, at one point we were given one onion and two cans of tomatoes for three days. Mostly we ate bread and (drank) tea.”²⁶¹

In Lutsk detention centre, one of the superior officers held that the food given to the detainees is the same food given to the soldiers.²⁶²

Papie, one of the former detainees from Lutsk said, the food given to them in this centre was very bad, over salted but they were obliged to eat because there was no other choice. They are forced by the soldiers to eat. The poor nature of the food made many detainees to come out from these centres with different types of diseases.²⁶³

Mams continued the bread given to them in Pavschino has stayed for days that after eating they usually have stomach upset. At times they are served with expired canned foodstuff that render most of them sick.

²⁵⁹ Interview with Mams four months after his release from Pavschino on the 25.05.2006 in Kiev

²⁶⁰ Interview with Mams four months after his release from Pavschino on the 25.05.2006 in Kiev

²⁶¹ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 46.

²⁶² Interview with V, a military officer at Lutsk facility, on the 12.05 2006 in Lutsk

²⁶³ Interview with Papie from the Democratic Republic of Congo, a former detainee from Lutsk, on the 24.05.2006 in Kiev

Space in Detention Camps

In Lutsk, a senior military officer said there are about fifteen people in a room using bunk beds like other military officials. He confirmed that at times their structure is too small to accommodate the number of detainees. In Mokachevo, Lutsk, Chop and Uzhhorod the migrants and asylum seekers are overcrowded in the rooms, Talking to Papie, a former detainee from Lutsk facility, he said,

“They were about fifteen people in a room that can accommodate at most three people. In their room there were bunk beds used as a strategy to accommodate the large number. It was usually difficult because there was no space that one could move.”²⁶⁴

At times the number of people are more than the number of beds available, there were no pillows, bed covers, mattresses. At the lowest part of the bunk beds, which is made for one person, two people are obliged to share. At times some people are obliged to sleep at the spaces found in between the bunk beds on the floor since the spaces are not enough. The beds are usually not in the best form.

“One of the detainees described the beds, this is not a bed, and it’s a piece of wood. I have to share (it) with another person. No mattress, no blankets, no pillows.”²⁶⁵

Another report, “One detainee told, at one point his cell had contained thirty-five people, and was so overcrowded that detainees were forced to sleep lying on their sides.”

In Pavschino, the issue of overcrowding was alarming, one detainee from this centre said it was not an issue to the authorities. They thought they have provided us with accommodation. In this centre, the bunk beds were quadrupled in order to accommodate the large number of people. In a rectangular room of about 2 x 2 square metre, about fifteen people share it.²⁶⁶ In these rooms, unknown people from unknown cultural background share beds and other facilities with others.

²⁶⁴ Interview with Papie on the 24.05.2006 in Kiev

²⁶⁵ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 45: Interview with A.A., Afghan, Kyiv, vagabonds' centre, Ukraine 22 March 2005.

²⁶⁶ I conducted the interview with A.M. from Bangladesh living today in Kiev on the 20.05.2006 in Kiev.

In Lviv, “the overcrowding is particularly severe. Former detainees told Human Rights Watch that eighteen men held in one room had to sleep in shifts because it contained only six small beds, with those not sleeping forced to stand.”²⁶⁷

Sanitary Condition

In Pavschino, the detainees are locked up at 19 hour without toilets or a urinary. Mams said, if one has to urinate or excrete he will do it at the door and on the following morning, they have to clean it. To go to toilet during the day, they have to stand in a line because there are very few toilets for about eight hundred people. The toilets usually emit pungent odour, which is difficult to withstand.

An Afghan, a former detainee of Pavschino said, the condition of the toilets is unbearable. The toilets are stinking, when one is in the toilet, the others are looking at him, which makes it difficult to excrete. One has no privacy. The toilets are exposed.²⁶⁸ There are some toilets found in an inner room of the camp of Pavschino but they are always locked not to allow any of the detainees to use them. At times when an inspection group or a human rights group visits the camp, they are shown these toilets as part of the toilets for the detainees.²⁶⁹

In Kiev vagabonds' centre, Human Rights Watch states that “toilets in the cell were open, “squat” toilets and were not partitioned from the rest of the cell. Some of the detainees had to sleep in close proximity to open toilets. Meanwhile according to one former detainee at Chop, toilets at that detention centre could only be used with the express permission of the guards, and those who asked for permission were beaten.”²⁷⁰

In Pavschino, the detainees do not have a bathroom. They bath usually in an open space no matter the period of the year. When it is winter, they are obliged to bath in the cold out side just as in summer. They do not have warm water. Warm water is found in

²⁶⁷ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 45: Interview with Ali, Pakistani, April 24. 2005, and P.N.R, Vietnamese, Medvedov, Slovakia, May 4. 2005.

²⁶⁸ Interview in Kiev with D.D. from Afghanistan, a former detainee of Pavschino on the 23.05.2006

²⁶⁹ Interview with S.B. from Afghanistan who is today living in Kiev. The interview took place on 23.05.2006 in Kiev.

²⁷⁰ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 48.

an office that is usually locked. They have limited bathing facilities. Many people use one bucket. Some former detainees said,

“This is a source to transport diseases because if a person has a disease, it can be distributed easily since there is no disinfectant or measures to prevent the diseases from passing from the common buckets to another person.”²⁷¹

A former detainee from Pavschino said, “many people and myself inclusive contacted skin diseases, rashes, and continuous body irritation because of the unhygienic situation in the use of a common bucket, dirty beds and smelling bed covers.”²⁷²

In other camps, the detainees complained that they were prevented from taking a shower or wash themselves, this could be seen “in Lviv border guard detention facility, detainees complained that they were not permitted to take a shower or wash themselves. A Palestinian in Lviv facility said, I am a Muslim, this place is not clean, my cloths are not clean, my body is not clean, I cannot pray.”²⁷³

In Pavschino, there are no cleaning personnel. The detainees are responsible to keep the environment clean. They clean the surroundings ranging from where they sleep, to the toilets. Most of the detainees contract diseases through the toilets because they do not have disinfectant to use for the toilets and the toilets are not properly used since the detainees are usually hurried up to give way to the next person who wants to use the toilets due to the limited toilet facility. One can always smell the odour of the toilet when passing through.

3.2. Specific Problems Faced by Women and Children

There are specific problems faced by women and children in these detention centres apart from the common problems faced by every one. In Lutsk women and children are

²⁷¹ Interview in Kiev with some African asylum seekers who were formerly detained in Pavschino on the 23.05.2006

²⁷² Interview in Kiev with a former Pavschino detainee from Angola. This interview was conducted on the 22.05.2006.

²⁷³ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 48.

locked up in these cells together with men. This has always led to sexual and gender-based violence. JJ said;

“Women are abused by the men when they are kept together. At a certain level, a woman is forced to have a relationship with a man not because it is her choice but because having a relationship with one of the men helps to prevent the too many demands made by other men.”²⁷⁴

UNHCR Ukraine, have received reports about sexual and gender based-violence in some detention facilities on the western border of Ukraine where men and women are kept together in one cell for protracted periods of time.²⁷⁵

Women go under base treatment from border guards who are not aware of gender-based violence. A group of six Chinese women previously kept in Lviv vagabonds' centre complaint that they suffered humiliating and degrading treatment at the hands of guards. The six women, one of them was pregnant, claim that guards forced them to strip naked. When they protested, the women said that five male officers touched their breasts while naked and threatened to beat them if they did not remain quiet.²⁷⁶

Pregnant women are detained without respect of their pregnancy. In Kiev vagabonds' centre, a woman who was five months pregnant said, she had repeatedly complained to authorities that the fetid environment and stale air in the centre had made her feel unwell.²⁷⁷

In Lutsk, unaccompanied children of the ages between twelve and seventeen were detained for variable period of time on the basis that they were trying to cross the borders to enter the EU states. Papie a former detainee said, there were children of twelve and thirteen years that were locked with him together:

²⁷⁴ Interview in Kiev with J.J. a former detainee of Lutsk facility. The interview was on 22.05.2006.

²⁷⁵ Interview in Kiev with the UNHCR Ukraine. The interview took place on the 16.05.2006 with Simone Wolke and Natalia Prokopchuk at the UNHCR head office.

²⁷⁶ Human Rights Watch Vol. 17 No 8 (D), 2005, pp. 36-37.

²⁷⁷ Human Rights Watch Vol. 17 No 8 (D), 2005, p.47.

“All I could do was to protect them. They were from China and Vietnam.”²⁷⁸ The UNHCR in Ukraine stressed, the specific needs of these children are systematically not addressed and there are cases of unaccompanied children being processed for deportation.²⁷⁹

3.3. Treatment of Asylum Seekers and Migrants

Beating is one of the methods used by the border guards to maltreat those attempting to cross the borders and those already in detention camps. The last attempt made by Mams at the Polish borders to cross to the EU states did not succeed. As he was caught, he was roughly beaten on every part of the body. As I was conducting this interview, his eyes and other parts of the body were still swollen. He was first of all beaten by the Polish border guards that caught him and later by the Lutsk border guards. At the Polish frontiers, because of the beatings, he had to fake a story that he has hypertetis B before they could allow him for a while. As they rushed him to the hospital for control and it was later discovered that it was not true, the guards got him again well beaten. The military officers are as well usually rude to the detainees, calling them all sorts of names like “Black Monkeys” for sub-Saharan Africans and asking them to go back to their countries of origin.

Papie narrated the story where he witnessed the border guards beating other detainees in Lutsk. He said he was not beaten but he saw how detainees from India, Pakistan were beaten in front of him. The border guards used belts and sticks to beat the detainees. As he was brought there, some soldiers wanted to beat him but when he shouted at them, they stopped looking at his big size, the soldiers thought it might be he is either a boxer or an expert of marshal art.

In Ukraine, Chechens received one of the worst treatments. KK, a Chechen asylum seeker detained in Chop for a month said that officials beat him upon detaining him and then in detention.

“They constantly asked me, did you fight in Chechnya? Did you fight? You didn’t fight- Well, why didn’t you fight? Where did you think you were going? He claimed that he was

²⁷⁸ Interview with Papie on the 24.05.2006 in Kiev

²⁷⁹ Interview with the UNHCR Ukraine on the 16 May 2006 in their headoffice in Kiev

beating almost every day in detention with nightsticks, mostly on his legs, but also on his head and back.²⁸⁰

Control in Detention Camps

Every inch of the life of detainees is controlled in detention facilities.

In Pavschino, there is a sentry at the main gate to control every body who is coming to visit the detainees. If somebody is not carrying permission, he or she cannot enter the facility except through bribing of the border guard at the main gate. There are other sentries at other parts of the fence where the guards sit to control that no detainee should escape or somebody to enter the camp without their knowledge.

In Lutsk, V, a senior military officer said if a detainee is seriously sick he or she will be carried to the hospital under the control of two border guards to see that the person does not escape.²⁸¹

At times the guards pop into rooms of detainees to carry unauthorised check. As Mams puts it, during this bizarre control, the guards take precious articles owned by detainees. At times they collect money from detainees without any document to prove who collected the money and what the amount was.²⁸²

3.4. Medical Health Care

Most of the migrants and asylum seekers found in detention camps are originating from countries where they suffer from different types of persecution. In relation to the nexus of the 1951 Geneva Convention and its Protocol of 1967, wars and other forms of persecution not stipulated in the Convention. The reasons for their flight, the danger they faced on their way and the difficult society they have met, have contributed to traumatise most of them. These traumatised detainees need psychological counselling but at most of the detention centres this is completely lacking.

V, the senior military officer said, we do not have access to psychologist to treat traumatised detainees. It is difficult and our resources and staff members are limited.²⁸³

²⁸⁰ Human Rights Watch Vol. 17 No 8 (D), 2005, p.42.

²⁸¹ Interview with V, a military officer at Lutsk facility on the 12.05 2006 in Lutsk

²⁸² Interview with Mams four months after his release from Pavschino

²⁸³ Interview with V, a military officer at Lutsk facility, on the 12.05 2006 in Lutsk

There are ill-equipped medical units found in the different facilities. The required drugs, equipment and staff members are insufficient. The Ukraine law stipulates that immigrants, detainees should go through a thorough medical examination. In most of the cases due to lack of medical equipments, the medical check up is really superficial since a nurse or medical official merely examine with the eyes.

Detainees with diseases such as tuberculosis, epilepsy are put together with other healthy detainees. If a detainee raises a complaint, no body takes it serious. At times the drugs brought by a detainee for treatment of a particular disease is confiscated. This is the case with a young asylum seeker from Côte d'Ivoire who suffered from epilepsy; he said that he had lost consciousness several times while in detention, after the guard confiscated his medication. FF said I did not see a doctor (visit) a medical centre while in prison. On February 11, 2004, he was taken to a police station in Kiev, but he claimed that instead of taking him to the hospital when he lost consciousness, a policeman left him, unconscious, in the stairway of the UNHCR office in Kiev.²⁸⁴

For the detainees suffering from HIV/AIDS, it is always difficult to know since there is no standard check up of the detainees. Even in cases that could be realised that there is a detainee suffering from HIV/AIDS, treatment is always not available because of a lack of resources and equipments.

It is a common practice that when a detainee is ill and he or she asks to see a doctor, he or she is rejected by the border guards. It is usually in very serious cases that the guards are forced to bring the detainee to the hospital. A Man from Bangladesh, a former detainee from Pavschino said, when he was in the detention centre, he was very sick. He informed the officials but no body took him serious. He does not know how he survived the illness. But he thinks the border guards of Ukraine need training on how to deal with migrants, asylum seekers and detainees.

The camp regime has created a sub-standard migrant community in Ukraine. If the camps are full or if the Ukrainian border guards decide to release some of the detainees that they cannot deport, they push these people on the street without any social

²⁸⁴ Human Rights Watch Vol. 17 No 8 (D), 2005, p.42.

assistance. These former detainees are forced to forge a life style. I decided to research on the life style of these people that the Ukrainian authorities are looking for a means to deport.

4. The Socio- Economic Conditions of Asylum Seekers out of Detention in Ukraine

The Socio-Economic condition of asylum seekers, refugees and other migrants living in Ukraine is not very different from the situation in detention centres. If there is any difference, it is in the situation that the asylum seekers, ex detainees and other migrants are not detained. There is no provision from the government to meet up with the basic necessities of human existence. There is no housing, medical care, Education, no freedom of movement due to constant police harassment. This poor situation has created the growth of a poor migrant community in this country. With a high rate of deportation, it is still quite impossible to deport every body. What has become of those who cannot be deported because of lack of necessary documents and other obstacles? When a detainee is released from detention, he or she is abandoned in front of the prison with no money for transportation and no address where he or she could live. Through many interviews, it was often said, “we are vulnerable persons in the society”.

4.1. Accommodation

The government of Ukraine does not provide housing facilities to asylum seekers. If an asylum seeker is out of the detention centre, he or she has to struggle under very hard conditions to have a place to live. Apartments in Kiev, where most of the asylum seekers and migrants live, are very expensive. And even more if the landlord discovers the person searching for an apartment is a foreigner, the price charged is immediately doubled than if it was a Ukrainian. This has contributed to overcrowding in apartments occupied by asylum seekers, refugees and migrants. These very high prices, have also contributed to the fact that migrants live far away from the city centre of Kiev except in places like Schulaska. Due to the high prices of flats, about fifteen people share an apartment of about 25 square metres. Mams said,

“We are forced to live like this because there is no other choice. The government of Ukraine does not make any provision for accommodation to asylum seekers. As one leaves the detention camp, there is no provision to start life. We are thrown out like birds to struggle for our selves. Fifteen people have to share an apartment to be able to come up with the sum of at least \$250 a month. We do not have the right to work and do not

have salaries. Our main source of income is \$ 45 dollars given to us each month by the UNHCR. And not all of us receive this money.”²⁸⁵

There are some people who are unable to raise this amount of money to share a flat with others. These people are forced to sleep on the streets in Kiev, public places and for those who can raise a very small amount of money per day usually sleep at Kiev main train station (Volksana). There is a section where travellers who have missed their trains can pay a very small amount of money and pass the night. Many asylum seekers, migrants and refugees use this place as their home. In the evening between 8 and 9 p.m., if one visits this section found on the left flank inside of the main train station and on the first floor, one will see people lined up to book for a space to sleep. In the morning, everybody has to quit this area and only come back at night. It is very difficult for the asylum seekers to have a bath, where to keep their property, where to pass the day. In winter as in summer, they face the very situation. In an interview with an African asylum seeker from Nigeria M.T, he said,

“I am going through a trying moment of my life. The only thing I carry with me is my toothbrush. I do not have any property. Where will I keep it? I have to sleep here only when I have money. It is relatively cheap but very uncomfortable. The days I do not have money, I sleep in public places like bars. It is very hard. The Ukrainian government should provide us with basic necessities like housing and food. We are appealing to human rights organisations to come to our aid.”²⁸⁶

A trend that is noticeable is that the police officials keep on going to apartments where asylum seekers, refugees and migrants live to harass them. The harassment comes when the police officials realise that many people live in an apartment. If the number is more than five, they are asked to pay a penalty and ten people must quit the apartment. Mams said,

“When we have an idea that the police officers will be visiting our apartment, ten people have to wait outside. At times it is very hard because it is in winter. If the police has to

²⁸⁵ Interview in Kiev with Mams four months after his release from Pavschino 25.05.2006

²⁸⁶ Interview with M.T., an asylum seeker from Nigeria, on the 25.05.2006 in Kiev

make two hours in interrogation, the other apartment mates have to stay out in the cold until the police is gone”.²⁸⁷

The condition of women and children in such a situation is very precarious. Many women suffer from Sexual and Gender Based-Violence (SGBV) since they are forced to live with men in one apartment not because they want but because they are obliged due to lack of finance, BB says,

“I am forced to be a friend with “A” because everybody in the apartment we live in wanted to have a relationship with me. The number of women is usually less than the number of men. This usually puts the women in difficult situation. It is very difficult to report the sexual violence that we undergo almost every day.”²⁸⁸

Women are usually the minority in the different camps where men and women are kept together. In the Western border of Ukraine, “report about Sexual and Gender Base Violence in some detention facilities ...where men and women are kept together in one cell for protracted periods of time.”²⁸⁹

Women are usually raped and suffer from sexual molestation in which they are fingered, caressed without their consent. In most of these camps men search the women. This mostly happens at the arrival of the ladies before they are taken to their rooms. For the issue of search, the women will always prefer to be searched by other women.

Women do not have their privacy. They have to dress at times while observed by men they do not have a relationship with. The situation as concerned children, many of the needs of children living in such an overcrowded atmosphere are not taken into consideration. After visiting some of these apartments, I realised that most of these children go to bed very late at night because of the situation of the parents. The other reason is the noise generated by the adults as they play to eliminate stress and

²⁸⁷ Interview with Mams in Kiev four months after his release from Pavschino 25.05.2006

²⁸⁸ Interview with B.B., an African asylum seeker from the Democratic Republic of Congo, on the 24.05.2006 in Kiev

²⁸⁹ UNHCR: Draft Ukraine May 2006, p. 16.

frustration. The physical security of these children is very limited since no social worker visits these homes to see how these children live.

4.2. Medical Health Care

Many asylum seekers have different types of diseases generating from different sources like overcrowding in apartments, poor nutrition, the general poor living conditions, stressful daily activities, lack of proper medication and the trauma faced by all because of the conditions that made them leave their homes, the sufferings they went through on their way during the flight destination and the difficulty they are pitted against in their flight destination.

There are certain diseases that the Ukrainian government has a national programme to fight against since it is transmissible. This has made it possible for some refugees and asylum seekers to have access to free drugs against tuberculosis or to be hospitalised if necessary because these refugees and asylum seekers are found in Kiev where they can have easy access to medical attention. For those living very far, they do not have the money to pay transportation to receive medical treatment and it is not easy for them to travel for fear of the fact that the police officer or border guards can arrest them and they will land in detention camps. In many interviews with different refugees from different countries, it was said,

“That the law is existing but it is not implemented. Many of the refugees suffer without assistance from the state. The issue is not to have a beautiful law but how to implement the laws. This position of the asylum seekers and refugees tandem with the declaration of HIAS that said, “the Ukrainian refugee law is considered as one of the best in Europe. But it is not efficiently implemented.”²⁹⁰

As a reaction to the health situation, the UNHCR concluded that the state is unable to take enough care of the asylum seekers and refugees since, “supplementary medication which is often needed to effectively combat the diseases is not free and is too expensive for most asylum seekers and refugees.”²⁹¹

²⁹⁰ Interview with Emmanuel Kanavanga working with HIAS Ukraine on the 24.05.2006 in Kiev

²⁹¹ UNHCR: Draft Ukraine May 2006, p. 20.

Due to inadequate housing facilities, many asylum seekers and refugees usually fall sick. At times the sickness is transmissible that moves from one person to another. For instance, chicken pox, tuberculosis. According to Mams, because of the small nature of their apartment where fifteen people are concentrated inside, they usually have skin diseases that move from one person to the next. In a particular case, one of the housemates had chicken pox. In normal case he should have been isolated so that others should not contact it but that was not the case. He kept on living with the other healthy ones, which ended up that two other mates contacted the disease.²⁹²

UNHCR Ukraine, “one of the major health problems affecting the refugee community is tuberculosis (TB). The main reasons provided by medical experts and implementing partners for the high level of TB are the low quality of accommodation, small-overcrowded apartments, irregular nutrition (and sometimes malnutrition) and stress.”²⁹³

Refugees and asylum seekers usually eat poor food without enough nutritive values and usually inadequate quantity to sustain them since they do not have enough money to pay their rents, transportation and good food. Papie and Lorian said,

“We usually select old bones for meat in the supermarket that are for the dogs and other animals. We buy stale foodstuffs about to be thrown for very cheap prices. Due to this poor nutritive value, many of asylum seekers and us refugees contact diseases like tuberculosis and chronic gastro diseases. We think the Ukrainian government should as an obligation assume its responsibility to supply to the refugees and asylum seekers food since food is a basic necessity.”²⁹⁴

There are many asylum seekers and refugees who are psychiatric patients suffering from different types of panic attacks. The Ukrainian government has not made provisions for such people. On the contrary, the government is seeking for possibilities to deport such asylum seekers or refugees in such a bad state. For instance, Mams said; “as I was in the detention facility in Pavschino, there was one man from Bangladesh who was behaving as if his head was not in order. We always heard from the other colleagues

²⁹² Interview in Kiev with Mams four months after his release from Pavschino 25.05.2006

²⁹³ UNHCR: Draft Ukraine May 2006, p. 21.

²⁹⁴ Interview with Lorian and Papie. The interview was on the 24.05.2006 in Kiev.

coming from the same country with the guy that the guards are complaining of not having means to send him back to the family members at home".²⁹⁵ A situation that creates more panic in these group of people. Many of the asylum seekers that I contacted complained of continuous fears, headache, stress and fatigue even when he or she has not done any job. These negative symptoms are originating from continuous thinking of deportation, the poor conditions of detention most of them already experienced and a bleak future.

4.3. Freedom of Movement

According to the Ukrainian Constitution, everybody legally living in Ukraine has the freedom to move and the right to choose where to live. In practice, asylum seekers and some tourists do not enjoy these rights. The documents given to asylum seekers in Ukraine do not permit them to travel to other parts of the country as they wish. During my stay in Ukraine, I wanted some asylum seekers to accompany me around the country to the different cities my visa permitted me to visit. To my greatest surprise, many of the asylum seekers legally living in Ukraine rejected my offer because they were afraid of the poor treatment they were going to receive from the police officers and border guards. An asylum seeker said,

"If we are caught by the border guards around the borders, we risk spending some months in the detention camp for them to prove the fact that we did not want to cross over to Europe Union territory. If one is based in Kiev, he or she is obliged to circulate around Kiev. We would have liked to accompany you but our status is a hindrance. It may be you look for somebody who has a refugee status".²⁹⁶

I experienced what the asylum seekers narrated. In the first place, to obtain a visa, one has to state the places he or she wants to visit in the country and it is written on the visa when one is a non-EU member. As a foreigner not coming from the EU, on my visa was written Kiev and the Zakarpattya region. According to the travelling agency that organised my visa, Ukraine does not allow people to circulate freely in the whole country.

²⁹⁵ Interview with Mams, an asylum seekers from the Democratic Republic of Congo, on the 24.05.2006 in Kiev

²⁹⁶ Interview with a group of African asylum seekers living in Kiev on the 10.05.2006 in Kiev

You must state precisely where you want to visit, if not you are going to have confrontation with police officers.

On the day I arrived Ukraine international airport at Borispol, Kiev, as the only black person, a Ukrainian border guard moved up directly to me alone and led me to a room where they took a very long while to process my passport. My passport was passed from one official to the next and finally, quite a different person from the airport personnel who collected it returned it to me. Before I arrived on the “migration zone” from the airport, all the other travellers with whom I travelled had already gone. On the following day, I went to the public telephone booth closer to the hotel where I spent the first two days to telephone, all of a sudden, three border police officers surrounded me and searched me into my pants in the public to the looks of passers-by. I felt very embarrassed as everybody stopped and was observed. When the police officers finished their search without a word to me, they returned my passport and money and drove off. What actually struck me most is the fact that none of the passers-by said a word or asked why I was being searched publicly. This very treatment was very common almost on daily basis until I left the country. As my translator and my self were at the Zakarpattya region, though my visa carried Zakarpattya region, we were constantly being controlled and detained in police or military posts.

At Chop, as we arrived the train station, we were immediately whisked to the police station where we were detained for about forty-five minutes. The police officers had to process our documents. Though we descended the train with other people, we, as blacks were the only ones who were taken to the police post at the train station. What was more terrifying is that during this time the police officers were processing our documents, none of them spoke a word to us. We just stood there and were observing. I tried to speak to them, but no body responded. I thought it might be because of the language barrier. I asked my translator to do that in the Ukrainian language and the respond was the same. As we were released from the police station, we took a taxi, which carried us to the camp, which is very close to the Chop train station. As we have always done, I asked to see the chief of the camp. Two young military officers who were standing and conversing as we entered the military fence took us through a narrow corridor to an office where we met an official. We were presented to him and immediately I engaged in a short discussion with him. Discussing off screen, I told him I had news of my brother who wanted to cross over to the EU territory but was detained somewhere here in Ukraine. I gave a name, which the man said there was nobody

bearing that name there. My translator who collected € 100 from me, discussed with the official for a while since he knows the Ukrainians better than I do. As my translator was discussing with the official, I pretended to be absent minded. After a while, the man led us out of the corridor to where the detainees are found. He continued repeating that there was no Cameroonian detained in the camp. He showed us the inside of the camp where people were detained but declined to make an interview with me.

The next scenario was in Mokachevo, where a border guard stormed a restaurant where we were eating to inspect our papers and shortly after that in the same restaurant, as we were still eating, another border guard came and kept us under watch. Immediately we finished eating and left the restaurant, the border guard who kept watch on us, arrested us in front of the restaurant and took us to the border guard station at Mokachevo where we were detained for over two hours because they wanted to process our visas. When everything was in order, this border guard accompanied us to the camp, asked us for money as we bought foodstuff to give some of the detainees. There, we created a relationship with him, which assisted us to have access into this camp. Where I conducted interviews and later took down notes in my hotel room. Due to that the following day, we went back to the camp with another taxi where I succeeded to film from the entrance of the camp through the forest to where the camp is found but not inside of the camp. Most of the interviews I recorded with my video cameras were from ex-detainees of the different camps. Meanwhile in Lutsk, my translator took me to his friend who works in this military camp. After facilitating things for us as a military officer he gave me an interview. With this contact person in Lutsk, my translator telephoned several times with him before our arrival at Lutsk.

As has already been written, there are many asylum seekers who have already filed in their asylum claims but are in detention camps. This is not in conformity with the Geneva Convention of 1951 and its Protocol of 1967. UNHCR Ukraine says, “in practice, asylum seekers are detained and do not have freedom of movement...the restrictions imposed on asylum seekers and on refugees are not in line with the provisions of the 1951 Convention.”²⁹⁷

²⁹⁷ UNHCR: Draft Ukraine May 2006, p. 15.

4.4. Education / Studies

The Ukrainian law on education obliged minors below eighteen years to obtain primary and secondary education, which could be got at public schools. The public schools provide free textbooks to pupils and students. Reverting to this law, the children of asylum seekers and refugees have access to primary and public education.

The free education for children is very appreciable but it is not as easy as seen. Many interviews conducted by me, bring out many difficulties the children of asylum seekers and refugees undergo. For instance, many of these parents live very far at the outskirts of the city or some live in remote areas out of Kiev. Most of these parents are unable to raise money to pay transportation for their children. There are times that the school has to make excursions. In such a situation, the parents are expected to pay for their children transport and feeding. This is very difficult for most parents. Due to this, the children will either not participate in an excursion, which is part of the studies, or completely leave the school. T.B told me

“My children are supposed to go on excursion with other children. I have to pay for transport but I do not have. This is going to affect my child psychologically as the other mates are going but she not. More to that she is losing one part of her studies. How is she going to meet up?”²⁹⁸

Ukraine has the system where public school pupils and students usually wear uniforms as part of the schooling system. These uniforms are obligatory for each child wanting to attend a public school. In most of the cases, the parents of asylum seekers and refugees are unable to buy these uniforms. This means their children cannot go to school. Add to uniforms are other needs like stationary - exercise books, pens and other writing materials.

“The reasons for some children not attending school or dropping out of school include language barriers, difficulties in reintegrating into school life after missing one or two years, and economic difficulties faced by their families who rely on them to work and / or

²⁹⁸ Interview with T B, T B has lived in Ukraine for about fifteen years and was my translator who accompanied me to so many offices in Ukraine. This interview was done over the telephone as I was already in Germany. He called me for assistance. This was done on the 16.07.2006.

who cannot afford school uniforms and supplies. Boys figure disproportionately in the dropout's rates to seek employment and help support the family.²⁹⁹

4.5. Access to Work

The recognised refugees are issued work permit but asylum seekers do not have the right to work. No matter how long an asylum seeker lives in Ukraine, he or she will stay without a work permit. When I was talking to a group of African asylum seekers in their congested apartment, they showed me their different types of status and retorted;

"We do not have the right to work. If we are working illegally and are apprehended by the police it is a whole problem. How are we going to pay our transports, rents, and food, bring our children to school or buy drugs when we are ill? It is very difficult for us here in this country."³⁰⁰

This lack of work permit has made many to work illegally at very low salaries. They do odd jobs that Ukrainians do not want to do like cleaning, assisting in the market as middle man between a shop owner and a customer to convince a customer to buy from a particular shop and to organise the price for the customer. At the end of the day, the shop owner will pay the asylum seeker about € 1 on the day they make good sales. T.B complained,

"It is a tedious job to run behind customers and at times to struggle with brothers and friends in front of everybody just to earn a piece of bread. If we do not do it like this, we are going to be thrown out of our apartments at the end of the month. This too much struggling contributes in making us sick."³⁰¹

5. Deportations and Refoulement from Ukraine

Deportation from Ukraine is a common practice executed by the border guards, ministry of the interior and Migration Service.

²⁹⁹ UNHCR: Draft Ukraine May 2006, p. 22.

³⁰⁰ Interview with a group of African asylum seekers. This interview was conducted in Kiev on the 16.05.2006.

³⁰¹ Interview with T B from Angola. This interview was done over the telephone as I was already in Germany. He called me for assistance. This was done on the 16.07.2006

The deportation is carried on irregular migrants, failed asylum seekers and on detainees whose cases or asylum claims have not been heard. Talking with a Chechnya, he said,

“We from Chechnya are brutally and forcefully deported when we are arrested by the border guards, the ministry of internal affairs or Migration Service without taking us to the courts to find out if we need protection or not, they just deport us.”³⁰² To defend the statement of the Chechnya, it is said that;

“An estimated four hundred persons (mostly Afghanistan and Chechnya) were refouled during 2004. Some of them were deported without having access to any procedures: they could not challenge their arrest, detention or deportation and had no opportunity to claim asylum. Others were not able to lodge asylum claims or to meet the tight deadlines for asylum claims under Article 9 of the Refugee Law. Those who were able to bring claims always often had those claims rejected by the migration service on procedural grounds, without their applications having been considered on the merits.”³⁰³

Simone Wolke, the UNHCR Regional Representative for Ukraine, the Republic of Belarus and the Republic of Moldova and Natalia Prokopchuk, Regional Assistant Public Information Officer from the UNHCR Ukraine said,

“ We are particularly touched in the manner in which deportation is carried on in Ukraine. Many of our clients who are eligible for asylum are deported without being heard and they are not given the opportunity to be heard. They do not know how to go with the whole asylum procedure and the Ukrainian authorities reject even some of those who try to file in their asylum claims. Though it is a general issue, the situation of those from Chechnya is very rampant since the authorities can easily lay hands on travelling certificates from the Chechnya embassy based in Ukraine”³⁰⁴

This position of the of the UNHCR is supported by the head of Migration Service in Uzhhorod, who admitted that “we can’t exclude the possibility that people who are in

³⁰² Interview with NN from Chechnya living in Ukraine without official documents on the 23 May 2006 in Kiev. He is afraid to confront the immigration officer because as he said, deportation will be the next step to follow.

³⁰³ Human Rights Watch Vol. 17 No 8 (D), 2005, p.61.

³⁰⁴ Interview with the UNHCR Ukraine on the 16 May 2006 in their headoffice in Kiev

need of protection are deported, particularly Chechnya's, because the Border Guards don't inform (us) who is deported and where they are sent. Particularly for Chechnya's they are immediately deported from Ukraine and (the) Migration Service doesn't have any idea that this happens. They find out post factum at the end of the year".³⁰⁵

In Ukraine, there is a deportation order issued by the Migration Service, the Ministry of Internal Affairs or Border Guards.³⁰⁶ Relating to Article 2(1.4) of this Order, the departments of internal affairs of the territory are responsible for the deportation of stateless persons and foreigners who arrived irregularly in Ukraine. Deportation has mostly been by force that usually leads to the abuse of the human rights of the deportees. The use of forced deportation in Ukraine can be seen from the statistics of a research institute in Ukraine as follows:

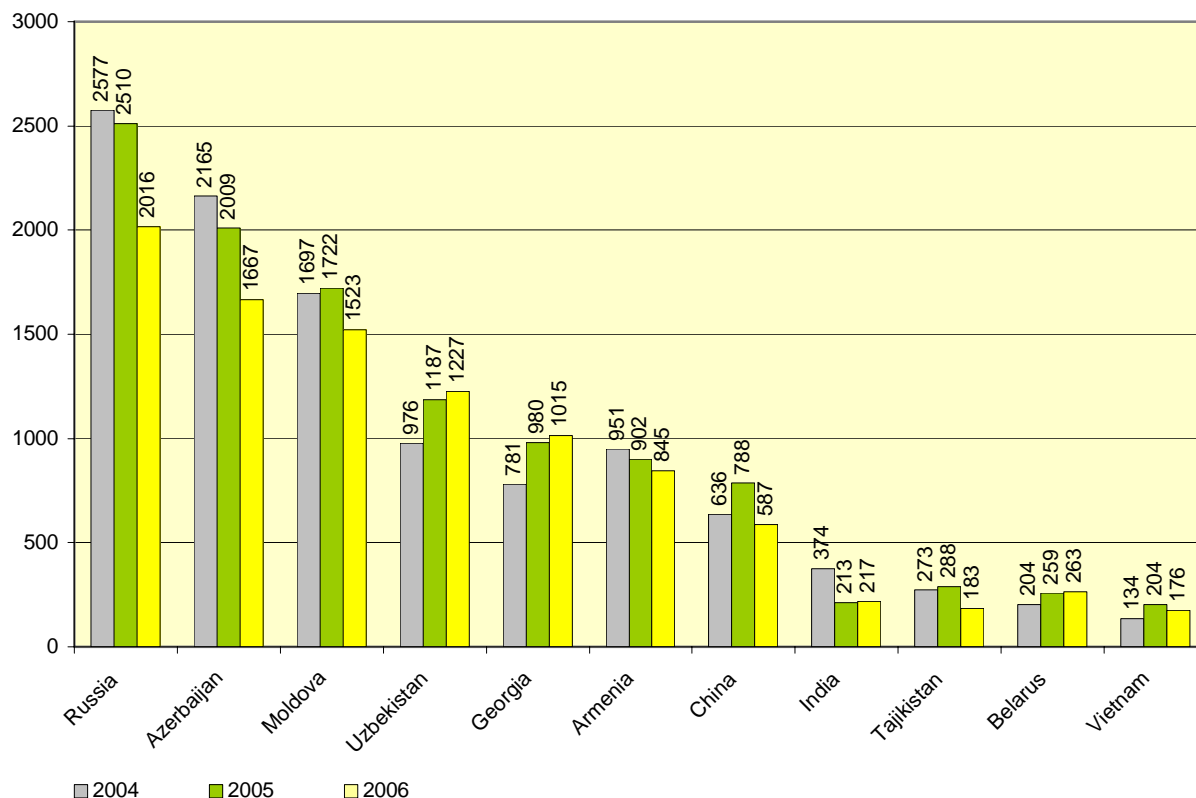
"...In 2004, 12,271 irregular migrants were expelled from Ukraine, including forced deportation of 2,211 persons. In 2005, their number remained quite stable and amounted to 12,375 persons, 1,808 (15%) of which were subjected to forced deportation. During 2006, the number of irregular migrants expelled from Ukraine somewhat decreased to 11,128 persons, 1,953 (18%) of which were removed with force."³⁰⁷

³⁰⁵ Human Rights Watch Vol. 17 No 8 (D), 2005, p. 62.

³⁰⁶ Government Committee for the Defense of State Borders of the Ministry of Internal Affairs, Order No. 477/877: "On the establishment of the procedure of transfer of foreign citizens and stateless persons who have violated the Ukrainian legislation on state borders and on the legal status of foreigners, by divisions of the border guards, their reception by agencies of the Ministry of Internal Affairs of Ukraine, their detention and expulsion beyond the State borders". According to article 2.1.4 of this regulation, territorial internal affairs departments are responsible for the deportation of stateless persons and foreigners who arrived illegally in Ukraine.

³⁰⁷ Pribytkova/ Gromovs May 2007, p.13.

Fig. 9 Number of Foreigners removed from Ukraine in 2004-2006 by citizenship



Source: Pribytkova, Irina, and Gromovs, Juris: Migration Trends 2004-2006, Söderköping Process Countries, Kiev, Ukraine, May 2007, p.14.

6. Analysis of the Camp System in Ukraine

6.1. Refugee Status Determination Procedure

The extra-territorial camps in Ukraine are used as detention centres for asylum seekers, refugees and other migrants. Though Ukraine has ratified the 1951 Geneva Convention and its Protocol of 1967, she is a country where many migrants are detained under very poor human rights conditions and for very long period. In Mokachevo / Pavschino in the western part of Ukraine where most of these camps are located, officials do not know how to handle the issue of Refugee Status Determination procedure. There is an unending procedure of restructuring of the system, which still does not work because there is certain weaknesses that do exist that need a very long time to be corrected. These are the lack of sufficient staff, absolutely no knowledge of asylum system, lack of money, corruption, for instance, "Zinchenko accused two members of Yushchenko's closest entourage, Petro Poroshenko, the head of the National Security and Defence

Council (and godfather to one of Yushchenko's children) and Oleksandr Tretyakov, Yushchenko's first assistant, of "corruption."³⁰⁸ In the country, lack of knowledge of what is the UNHCR and its functions and lack of infrastructure. The UNHCR and its other agencies charged with management of migration and these camps in Ukraine are understaffed and are unable to cover all the different parts of the country.

6.2. Accommodation

In Ukrainian detention camps, there is a complete lack of basic necessities. There is not enough food, poor quality food, and lack of drugs, clothes. The manner in which the detainees are treated in these centres is extremely poor. Though it is at times related to the limited state budget, it is more than that. The beating of the asylum seekers in detention camps, provision of expired food and dirty bed covers show an intentional act to sanction the asylum seekers and at the same time to show the lack of knowledge and non respect of international treaties and other instruments defending the rights of asylum seekers and other migrants. There is an over concentration of asylum seekers and other detainees in cells due to the lack of the necessary infrastructure.

Lack of Infrastructure

“Analyses of the situation with managing migration in Ukraine shows that, at the moment, Ukraine is not prepared to fulfil this Treaty entirely. Ukraine does not have the capacity to accept, detain and transfer nationals of third countries to their countries of origin after being returned from the EU.”³⁰⁹

The infrastructure to accommodate the detainees is very insufficient. They are usually packed full in a group room, which usually swallows more than the required capacity in the different camps. Mostly the detainees are found in military camps because this project started in a very unprepared and premature note. In the rooms where this people are locked up, there is no aesthetic. They are military-like in which the detainees either sleep on very hard floor or share an uncomfortable bed with one another in a random

³⁰⁸ Kupchinsky, Roman: Ukraine: Corruption Allegations Abound. RFE/RL considers the issues as Kyiv's political crisis erupts amid a widening political scandal over continuing corruption in the government. On Radio Europa /Radio Liberty, Thursday, September 8, 2005.

Online: <http://www.rferl.org/featuresarticle/2005/9/E539907C-99DC-419B-92BA-483C36A92B38.html> accessed on the 19.02.2008.

³⁰⁹ International Centre for Policy Studies (Kyiv, Ukraine)/ Institute for Public Affairs (Warsaw, Poland);, Ukraine's policy to control illegal migration. Kyiv 2006, p. 16.

manner. Care is not taken if any of the detainees has a disease that can contaminate the other. Due to lack of space in these structures, there is an intimate atmosphere where no privacy exists any longer. At times the detainees breathe into the faces of one another as they sleep.

Goffman as portrayed by Mams describes this picture of the camps as follows:

“There are certain bodily comforts significant to the individual that tend to be lost upon entrance into a total institution – for example, a soft bed or quietness at night. Loss of this set of comforts is apt to reflect a loss of self-determination, too, for the individual tends to ensure these comforts the moment he has resources to expand”³¹⁰

Due to this insufficient infrastructure, the detainees are locked up which prevents them from moving to relax. There is no possibility to do any sports. This is an infringement of their rights or freedom of movement. They are locked up in very ugly architectural buildings that only help to increase their illness. Without play grounds or television rooms to distract them from their stress.

Hygienic Situation

The hygienic situation is at the lowest state where many of the detainees are contaminated. In Pavschino where the detainees are locked up at 7.p.m until the following morning, they are forced to defecate in the overcrowded rooms. With this situation many of the detainees catch different diseases. Worse of all is the following morning when some detainees are asked to carry the faeces outside. The detainees are usually hurried to the toilets and back during the day, which does not give them enough time to defecate. This is described as an aspect of Chinese political prisons:

“An aspect of isolation regimen which is especially onerous to Western prisoners is the arrangement of the elimination of urine and faeces. The “slop jar” that is usually present in Russian cells is often absent in China. It is a Chinese custom to allow defecation and urination only at one or two specified times each day- usually in the morning after

³¹⁰ Goffman Erving: *Asylums. Essays on the social situation of mental patients and other inmates.* New York: Anchor Books, 1st ed., 1961. Harmondsworth, Middlesex, England: Penguin Books reprinted 1991, p.47.

breakfast. The prisoner is hustled from his cell by a guard, double timed down a long corridor, and given approximately two minutes to squat over an open Chinese latrine and attend to all his wants. The haste and public scrutiny are especially difficult for women to tolerate. If the prisoners cannot complete their action in about two minutes, they are abruptly dragged away and back to their cells.”³¹¹

The whole environment is stinking because of the culture of defecating in the overcrowded rooms used to sleep. There is also the issue of sweats found on dresses, towels and bed covers used for quite a long time and were never washed but are imposed on others to use. A situation Mams considers as spreading diseases. The toilets were stinking and without doors which makes it difficult to use. It is a culture in these areas to have toilets without doors and this makes it possible for one not to have his or her privacy.

6.3. Women and Children in Detention

Women and children usually suffer particular maltreatment in the detention camps, which leads to the abuse of their rights, and render them psychologically ill. There are cases where children not accompanied by adult had gone through the process of deportation. And many basic necessities are lacking for the women and children in Detention.

“Particular concerns have arisen concerning the conditions in which women and children have been detained. There have been situation where unaccompanied children have been detained and processed for deportation by Border Services. Moreover, at the Chop detention centre many women and children have been confined to the same room, without necessarily being provided access to basic amenities”.³¹²

Reverting to the conditions of children of asylum seekers and migrants, the Border Guards and Ukrainian government do not live in conformity to the norms of the Convention of the Rights of the Child (CRC) which in its Article 37 hinders the detention of minors except as a last resort and only for the shortest possible time. At certain times, children are handcuffed with adults when arrested and are locked up together for a very long period of time. There are no specific measures taken to guarantee adequate

³¹¹ Goffmann 1961, p.33.

³¹² UNHCR: Draft Ukraine May 2006, p. 16.

protection to children. Asylum children do not go to school, this makes them to be unable to develop but on the contrary to degenerate in their talent and psychology, health and become very aggressive. Though the Law on Refugees stipulates that the child should be united to his or her family, the Ukrainian government does not take any measure to facilitate the tracing of the family of the children or to reunite them with their family or to provide family reunification visas.

This Convention on the Rights of the Child CRC in its Article 3 expects from state party

“...Services and facilities responsible for the care or protection of children ... conform with the standards established by competent authorities, particularly in areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”³¹³

The state does not take the initiative to mediate in cases where unaccompanied minors have got no guardian, or to identify their other needs when registered or to search for accommodation for them. This is at times done by certain NGOs but the NGOs are mostly found in Kiev. In the other parts of Ukraine where these NGOs are not found, this is not a topic. The asylum procedure demands the need for child asylum seekers to have a legal guardian. Usually the government does not take measures to provide unaccompanied child asylum seekers with identification documents that can facilitate their acquisition of a guardian. If this identification papers are not there, agencies that usually provide the legal guardianship cannot go ahead to do that.

The government does not take any measure to monitor the well being and physical security of asylum seeker children. Though the UNHCR and other NGOs try to do that their capacity is very small with the broad geographical feature of the country where asylum seekers are found all over. There are no home visits instituted by the government even for the most vulnerable cases. In short, the government of Ukraine does not see this as a necessity. In Odessa, in the TAC centre, the staffs makes an effort to guarantee security for the children for the very short time that they are there.

Due to these shortcomings, in 2005, according to the UNHCR,

³¹³ Article 3 (3) of the Convention on the Rights of the Child, Document A/RES/44/25, 12 December 1989, accessed from this website <http://www.hrweb.org/legal/child.html> on the 24.10.2007.

“A National Plan for Children was launched by UNICEF and the Ministry of Family and Youth. UNHCR was asked to contribute to ensure that refugees and asylum seekers children’s rights and needs are taken into consideration in broader planning for children in Ukraine. The plan has a ten year time frame for the implementation of Karin’s commitments to the UN Convention on the Rights of the Child, and represented a serious effort by the Ukrainian government to provide a workable framework in this regard.”³¹⁴

The manner in which asylum seeking children and other migrant children are detained in Ukraine does not conform to the Ukrainian law and other human rights instruments like the ECHR and the Convention on the Rights of the Child. According to the CRC, detention of a child can only be manifested as a measure of last resort and at the shortest time possible. Children should be separated from adults in cases that it is not in the interest of the child.

It would have been very helpful if the refugee child or children of asylum seekers have contact with the local communities and could go to school where they could learn and make other friends of their ages. In Ukraine, children in detention do not benefit from these services and this impacts negatively on their health because some of the children might have suffered from torture or violence or have experienced other atrocities themselves. Nobody cares about this in Ukraine. At times these children escaped from the hands of warlords who abducted them to become child soldiers. In such a situation, they are found in a traumatic situation and therefore need specialised treatment to rehabilitate them.

There are many barriers that make it difficult to be aware of many of the cases of sexual and gender based violence. These include the lack of easy access into some of the camps these women and children are found. If the UNHCR, NGOs and other organisation want to go into these camps, they need a special permission. These barriers make it difficult for the staff members of these organisations to create a familiar atmosphere with the women who can give them the courage to always report such cases. Another difficulty comes from the fact that the asylum seekers and refugee women are spread all over the country meanwhile the NGOs and UNHCR are

³¹⁴ UNHCR: Draft Ukraine May 2006, p. 16.

concentrated in Kiev. This also act as hindrance to reach certain cases of sexual abuse. In Kiev, the government has created a project that covers a limited number of victims of sexual abuse and domestic violence but it does not cover asylum-seeking women. The government has very weak mechanisms to prevent and to act or react in cases where sexual violence and other domestic violence are reported.

6.4. Detention

In relation to Ukrainian asylum seekers and refugees as already mentioned above, their conventional rights of the 1951 Refugee Convention are wantonly infringed. Article 31 of the 1951 Refugee Convention covers asylum seekers who have already filed in their claims and are waiting a decision. These persons are not supposed to be detained. On the contrary, they are kept in detention camps. Their rights as asylum seekers are abused.

The Ukrainian government is punishing irregular entries for individuals who flee from their home countries and entered Ukraine to seek for security because their countries or regions of origin are not secured. In this light, the Ukrainian government is using detention as a punitive measure. This is an abuse of the Geneva Convention for Refugees whose provision defends the right for persecuted persons to seek asylum. In its Article 31, persecuted person who entered the country illegally should not be punished for illegal entry. And Ukraine as a party of this Convention must respect the provisions but this is not the case. The limited period according to the Ukrainian law to detain is thirty days but there are many who have spent over six to eight months and even more in detention centres. The abuse of their rights in detention can be seen in many aspects:

“Asylum seekers apprehended for crossing the border illegally are routinely detained including those who have appealed a rejection of their asylum claims by the migration services. This has been particularly problematic in the Zakarpatya region where authorities have justified such detention to prevent spontaneous illegal crossing of the Western border.”³¹⁵

The asylum seekers, migrants and refugees face arbitrary detention in which they are treated like second-class human beings in a sub standard manner. They are shouted

³¹⁵ UNHCR: Draft Ukraine May 2006, p. 16.

upon by the guards, refused visits, subjected to physical torture, do not enjoy constitutional procedural rights, lack of means to communicate with the outside world, legal counselling and interpreters. Many of them are detained without information of why they are detained or when to be released from detention. During detention, they do not have access to doctors when seriously ill. They are usually detained longer than the period stipulated by the law of Ukraine to detain a migrant. In the interviews I conducted, the detainees and former detainees said they were either arrested as they tried to enter the country to seek for asylum without visas or as they were leaving the country to one of the EU states because they have not found effective protection in Ukraine.

There were some who were already in the country and had sought asylum and were waiting for a decision. In this case, since the police does not recognise documents issued by the UNHCR, whenever any of these asylum seekers presents such documents, they are apprehended and considered as people who did not have any document to live in the country. This is done because most of the Ukrainian police officers have little or no knowledge of what the UNHCR stands for. To them, they believe a state is being created within the state of Ukraine. This situation makes Ukraine to be an unsafe country for asylum seekers. Ukraine should not be considered as a safe country for asylum seekers until they have understood the different elements that constitute the asylum system and if it so happens Ukraine can start processing asylum claims. That does not mean that asylum seekers and failed asylum seekers should be returned to Ukraine from the EU states

Arbitrary and Prolonged Detention

All international treaties and conventions vehemently condemn arbitrary and prolonged detention. Arbitrary detention occurs when the existing law is not applied or if the manner in which it is executed is not in line with the law. It is an abuse of human rights and the manifestation of injustices. In the Universal Declaration of Human Rights, it is stipulated that

“No one shall be subjected to arbitrary arrest, detention or exile,” A similar position could be found in the International Covenant on Civil and Political Rights, (ICCPR) which reads in its Article 9 “Everyone has the right to liberty and security of person. No one shall be

subjected to arbitrary arrest or detention or be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”³¹⁶

In the field of migration, many migrants, asylum seekers and refugees have become a target of detention. They are detained in almost all countries for very long time and in very bad and inhuman conditions. This is a cause for concern to the extent that the U.N. Working Group on Arbitrary Detention set certain elements to identify if the deprivation of liberty of migrants and asylum seekers could be justified as arbitrary. This working group came up with principles that address this situation; in its Principle Three, it is stipulated that a migrant or asylum seeker found in detention “ must be brought promptly before a judge or other authority,” and in its Principle seven, “ maximum period should be set by law and the custody may in no case be unlimited or of excessive length.”³¹⁷

As mentioned above, Ukraine law has a limited period that a person could be detained but this period is usually not respected and that is the reason that many migrants and asylum seekers are permanently being detained. There is no instrument that sees into it that these migrants and asylum seekers could be released as stipulated by the Ukrainian law. This means that the implementation of the existing law is almost non-existent. It is more unfortunate because authorities of Ukraine do not even see the fact that these asylum seekers and migrants are detained. To them, they have been exercising humanitarian assistance to keep these individuals in custody because of certain reasons that prohibit their deportation, for instance, the difficulty to obtain a travel document back to their countries of origin. This could be seen in some declarations done by some of the authorities.

“While waiting they (asylum seekers) have no place to sleep and eat. Here (in detention) they have three meals per day” similarly, the head of Cernihiv migration service saw

³¹⁶ Article 9 of the International Covenant on Civil and Political Rights, (ICCPR) Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

³¹⁷ United Nations Commission on Human Rights: Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5, Situation Regarding Immigrants and Asylum Seekers, Online: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/39bc3afe4eb9c8b480256890003e77c2?OpenDocument>, accessed on the 04.11.2007.

detention as the reasonable solution for managing asylum seekers: “They are taken care of, and at least they are fed...(the) the border guards (have) created special places (to house them) in the border guards unit; for them, it is much better than to be homeless...it is better for them not to have complete freedom but to be taken care of...the purpose is to keep them in a close regime...”³¹⁸

In relation to the European and International standards, detainees no matter where they are detained should fall within the ambit of a minimum standard of detention. This holds true with migrant’s detainees that will protect and preserve good health, access to social services and safety. In relation to camps I visited, Ukrainian detention conditions do not respect the minimum standards expected by International law or the ECHR. With overcrowding, poor sanitation and the other aspects enumerated above, Ukraine cannot be considered as a safe country to process asylum seekers claims.

Torture of migrant detainees in the detention camps is one of the aspects I got from former detainees during my visit in Ukraine. Though „Article 28”³¹⁹ of the Ukrainian Constitution prohibits torture, inhuman and degrading treatment or punishment. The torture of asylum seekers, refugees and other migrants still prevail. This is an infringement of Articles 2 and 10 of the International Convention on Civil and Political Rights (ICCPR), which prohibit torture, cruel, inhuman and degrading treatment or punishment. It is as well an abuse of Article 3 of European Convention on Human Rights (ECHR), which prohibits torture, inhuman treatment, punishment and degrading treatment. The EU states are very aware of the human records of Ukraine as a country just originating from the former Soviet Union where torture is part of the politics. To support the construction of camps to host migrants, asylum seekers and refugees under such conditions in Ukraine, portrays how much the EU states minimise torture and other abuses of human rights.

In Ukraine, foreigners arrested by the state machinery, that is either State Border Guard Service or Internal Affairs ministry have to issue an order of detention concerning the

³¹⁸ Human Rights Watch Vol. 17 No 8 (D), 2005, p.62.

³¹⁹ Article 28 of the Constitution of Ukraine, Adopted at the Fifth Session, of the Verkhovna Rada of Ukraine, on 28 June 1996: Everyone has the right to respect of his or her dignity, No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity; No person shall be subjected to medical, scientific or other experiments without his or her free consent. This can be seen in this website <http://www.rada.kiev.ua/const/conengl.htm> , accessed on the 24.10.2007.

detainee. In this situation, the state prosecutor must be informed in writing within the period of 24 hours. In administrative detention, the prosecutor has to sign to confirm immediately. If this is done, then the detention can last for maximum ten days.

If the case happens as stipulated above, then the individuals arrested for administrative detention will have their cases reviewed within the period of fifteen days by the Border Guard Service or the court. Unfortunately, this does not happen since the foreigners detained do not usually know the law or any other man of law and are not informed of their rights. They hardly know what to do as to ask for a review of the case. Arrest and detention of asylum seekers, refugees and other migrants in Ukraine are done arbitrary. This means that no warrant of arrest is shown to the arrestees. And since they are not informed of other rights, they cannot challenge their arrest and detention. This has made many of these individuals to spend very long time in detention camps.

The detention of asylum seekers and other migrants in these camps indefinitely violates a long line of provisions that are guaranteed by the 1951 Geneva Refugee Convention. These are not only provision of judicial status of refugees, but also their rights to gainful employment and administrative measures governing the refugee freedom of movement. The principle of “effective protection” is completely lacking. This weakness seriously undermines the whole international law of refugee protection, which was codified after the Second World War and later ratified by Ukraine. Asylum seekers and refugees are supposed to move freely in any country they find themselves for the limited time they live in the country.

6.4.1. Communication with the Outside world

Many of those detained have found it difficult to communicate with their lawyers, UNHCR or its partners and with their family members because there was no means. Mams said, “For my whole stay in Uzhhorod, I did not contact anybody because there was no means. I had a very short time of about 30 minutes a day to see the sun light and the facilities were lacking for me to contact my friends or family members. I was really in a prison.”³²⁰

Communication with the authorities in these camps is usually difficult because the authorities always shout at the detainees when they want to pass a message. The

³²⁰ Interview with Mams in Kiev four months after his release from Pavschino 25.05.2006

detainees are constantly living in fears to the extent that when they want to say certain things to the authorities, they usually speak with very low voices in a manner that one could think they are speaking to themselves. In case of visitors, there is always an authority to control the communication of the detainees. In Pavschino there is usually a colonel who always follows each team visiting the camp. One of the main reasons is to filter the information going out concerning the state of the camps. Many of the detainees have criticisms against the living conditions of the camps and want to pass to the outside world but it is usually difficult with the presence of the colonel.

The detainees are not usually informed on the decision concerning them. Whether it is deportation or transfer or the length of stay in the camps. This exclusion of the detainees from communication creates a distance between the authorities and the detainees and at the same time, reinforces a tight control over the detainees. All these barriers create an antagonistic clichés. Two different worlds are created in the social and cultural lines and existing along side of one another and at the same time they remain strange to one another because non-is able to penetrate the other. This create a very big gap between the authorities and the detainees that work to the advantage of the authorities in managing the detainees and also in creating different sub-groups within the detainees that makes it easy for the authorities to easily manage the detainees who are in conflict with themselves.

Access to Counsel

Though it is clearly stated in the Ukrainian law that detainees should have access to free counselling, in practice it is the contrary with migrant detainees, asylum seekers and refugees. Most of the asylum seekers do not have access to this provision. The state does not provide assistance to asylum seekers, refugees and migrants detained. This makes it difficult for them to know and understand certain aspects of the law. For instance the delay to file in an asylum claim. This has made many asylum seekers to lose their claims when filed. In an interview with Hebrews Immigrants Aid Society (HIAS) in Ukraine, one of the representatives said,

“We provide legal assistance to asylum seekers in Kiev, assist them to fill the necessary questionnaire, application form, but our legal officers are not enough. And we have

received report that in other regions like in Pavschino, detainees do not have these opportunities.”³²¹

Most of the detention centres are found very far away from the Hebrew Immigrants Aid Society. And in very remote areas that makes it difficult for lawyers or other organisations that can offer counselling. It is not always easy for organisations and counsellors to have access to these camps because of administrative bottleneck. All these barriers prevent the detained and non-detained asylum seekers and refugees from having legal counselling. The border guards usually extorted asylum seekers in Pavshino by asking them to pay a high sum of money to obtain a lawyer. It was discovered that “asylum seekers detained in Pavschino are encouraged by border guards to hire particular lawyers who allegedly have close relations with the officials and can guarantee release from detention for a fee of \$ 1,000 (a part of this fee serving as bribe for officials.)”³²²

In Lutsk, V, a border guard, completely manifested ignorance to the fact that detainees needed counselling. To V, “counselling is an issue of the west and that is why the structure is not found in Ukraine”³²³. This lack of counselling makes most of the asylum seekers to be ignorant of the Ukraine asylum system and this makes the number applicants rejected to increase wantonly. It also makes them not to be aware of their rights as asylum seekers. And not to have trust in the country they find themselves. Counselling is usually used to build a certain degree of trust that can permit a person to alter certain things that without awareness, it will be difficult to do.

Access to Translators

The provision of translators to facilitate the asylum seekers, migrants or detainees to understand the Ukrainian authorities does not usually exist. As many of the detainees confirmed,

“We are left at the mercy of God. For those who can speak English, they can at times meet some body who tries to speak in English but for those of us who speak either

³²¹ Interview with Emmanuel Kanavanga working with HIAS Ukraine, on the 24.05.2006 in Kiev

³²² Human Rights Watch Vol. 17 No 8 (D), 2005, p.25.

³²³ Interview with V, a military officer at Lutsk facility on the 12.05 2006 in Lutsk

French, Portuguese or other languages, it is really difficult to go through the interviews because we do not understand them and neither them us.”³²⁴

This very situation is faced at the borders between Slovakia, Poland and Ukraine. Mams says when he was caught the fourth time as he was struggling to enter Western Europe, since he did not find effective protection in Ukraine; the different authorities spoke in their national languages. They did not make effort to speak to him in French, the language he speaks and writes.

The lack of translator logically deprives a detainee from his or her basic right to be informed on the reasons arrested or the procedure being carried as charges against him or her. This is an infringement of Article 5 (2) of the ECHR, which capitalises on the importance to inform a detainee with immediate effect and in detail in a language best fit to the individual in relation to the detention and in case of any charges against the person and the necessary procedures. Though the Ukrainian Constitution in its Article 29 (d)³²⁵ carries this very clause, it is in reality not implemented. The position to inform a detainee with promptness is also reiterated in Article 9 (2) of the ICCPR, in which is stated that “anyone who is arrested shall be informed, at the time of arrest, of the reason for his arrest and shall be promptly informed of any charges against him.”³²⁶

The lack of translation is an attack of the right of the detainees. In almost all the cases, I interviewed, the detainees or former detainees are usually obliged to sign a form when arrested. This form is written in Ukrainian language, which the asylum seekers, refugees or other migrants cannot read or understand. This is an infringement of the procedural rights of the individuals. In practice, everybody have the right to give his or her consent in what ever document he or she is signing. At times these documents signed by the detainees are deportation documents. The lack of knowledge of the document to be

³²⁴ Interview with Mams in Kiev four months after his release from Pavschino 25.05.2006

³²⁵ Article 29 (d) of the Constitution of Ukraine, Adopted at the Fifth Session, of the Verkhovna Rada of Ukraine, on 28 June 1996: Everyone arrested or detained shall be informed without delay of the reasons for his or her arrest or detention, apprised of his or her rights, and from the moment of detention shall be given the opportunity to personally defend himself or herself, or to have the legal assistance of a defender. This was accessed from <http://www.rada.kiev.ua/const/conengl.htm> on the 24.10.2007.

³²⁶ Article 9(2) of the International Covent on Civil and Political Rights, (ICCPR) Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

signed has caused the deportation of many back to countries that they have been fleeing and this can lead to the risk of persecution, torture, other cruel, inhuman or degrading treatment.

6.4.2. Torture in Detention

In the different camps, the detainees and former detainees complained of organised violence and torture. They were usually beaten when caught entering Ukraine without a visa or attempting to leave into the EU states. As earlier mentioned, Mams complained of how he was seriously beaten until he had to lie that he is a patient. In Lutsk, Papie complained on how they were usually beaten. Though he was not beaten, but he watched how the guards were beaten and maltreating other detainees. The beating and other form of torture, inhuman and degrading treatment lashed out on the detainees are completely against regional conventions like the ECHR and other international Conventions like the ICCPR and the Universal Declaration of Human Rights.

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant of civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, one will condemn Ukraine for not respecting these instruments. Ukraine has not respected the desire to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment that is being spread in the world. This means that Ukraine is disrespecting the recognition of the equal and inalienable rights of all members of the human family to promote freedom, peace and justice in the world. Article 1 of the Convention against Torture defines torture as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession, punishing him for an act he or the third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other

person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”³²⁷

Control in Detention

Every inch of the life of the detainees is controlled. Every morning, they are asked to form a line like young schoolboys before being counted to see that no one escaped the previous day. This act greatly reduces adult to children. More to that there are military officers spread all over the fence to watch the movement of visitors entering and leaving the camps. In case of a visit, there is a person standing by to control what is being said. Since most of the visits are official, there is always somebody accompanying the visitors. In an unofficial visit, the situation is the same. The detainees cannot prevent their visitors from meeting them in the disgraceful circumstances since they are already in an untidy and congested environment. They find themselves helpless because somebody in front of the visitors is leading them as if they are criminals.

Anybody who has find his or her self in such a situation can understand what it means when every inch of ones life is constantly being controlled. It becomes a surveillance and not guidance. In surveillance, the authorities make sure that everybody in the camp does what is expected of he or she and if that is not done, there will be a sanction of beating and other maltreatment like forcing the person to stand on one leg and put one finger on the ground.

There is the lack of privacy. The guards search the rooms of the detainees and at times the persons and this is usually done as a routine. In this light, the detainees do not have any private life. At times the guards collect precious goods owned by the detainees without giving them a note to indicate the property collected. This search has put a lot of fears in the minds of the detainees who though did not commit any crime, now feel they are criminals. The manner in which the search is conducted is very brutal as the soldiers usually shout and beat those who try to resist.

6.5. Medical Health Care

According to Article 25 of the Universal Declaration of Human Rights:

³²⁷ Convention against Torture and other cruel, inhuman or degrading treatment or punishment. Adopted by the General Assembly of the United Nations on 10 December 1984, entered into force 26 June 1987. This was accessed from this website <http://www.ohchr.org/english/law/cat.htm> on the 24.10.2007.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

In addition to the UDHR, Article 12: 1 of the International Convention of Economic Social and Cultural Rights states:

“The state parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

In Ukraine, the medical treatment of the refugees, asylum seekers and other migrant detainees does not correspond with the terms of these above-mentioned Conventions. A key objective of a health policy strategy is lacking to inform all the detainees or asylum seekers to have knowledge on issue of health. First of all no services is available for those who need health or medical attention. The detainees are not allowed to learn the language which could facilitate the task for them to raise their complain when sick. In detention, they are subjected to exclusion to criteria based on health conditions. And when a detainee is sick, the authorities do not usually give the person to visit a medical doctor. On the contrary, they tell the detainee that he or she is pretending. Cases taken to medical doctors are very serious ones threatening life.

When there is violation of the rights of these individuals, it is difficult to obtain good health. Many asylum seekers have different types of diseases generating from different sources like overcrowding in detention camps, poor nutrition, the general poor living conditions, stressful detention conditions and lack of proper medication

The continuous detention of asylum seekers, refugees and other migrants made them to develop panic attacks, depression and become nervous. I realised as a former asylum seeker that many of them had problems with memory and lacked concentration. Some of these deficiencies are arising because some of the detainees are thinking of their family members they left behind and could not actually identify where they are. They cannot say if they are living or not. They also think on the very dangerous route they took before arriving Ukraine and finally the situation they find themselves. All these, coupled with isolation from the people from the country they live and their poor manner of life have a negative effect on their physical and mental health.

6.6. Camp as Instrument for Deportation

In Ukraine, the camps are used to contain asylum seekers and migrants who entered the country without visa, wanting to cross over to the EU countries or deported from EU states. In most of the cases, since human rights organisations do not have easy access to these camps, many of the detainees are deported in a brutal manner without the knowledge of anybody. The detainees are locked up in these camps meanwhile the Ukrainian officials organise their deportation documents. The deportation operations happen daily. The Border Guards, immigration services carry on their deportation in disrespect of the Geneva Convention for Refugees of 1951 and its Protocol of 1967, where the principle of non-refoulement is strongly expressed. In article 3 of the 1984 UN Convention against Torture, it is elucidated that;

“No State Party shall expel, return (refouler) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.

. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”³²⁸

This is usually not the case in Ukraine. Ukrainian Border Guards apprehend and deport detainees without the knowledge of the migration officers. And they do not want to know if the deportee was an asylum seeker or not. This could be seen in the report of Human Rights Watch, where it is stated that:

“The head of the migration service in Uzghorod admitted, we can't exclude the possibility that people who are in need of protection are deported, particularly Chechens, because the border guards don't inform (us) who is deported and where they are sent. Particularly for Chechens, they are immediately deported from Ukraine and the migration service

³²⁸ Convention against Torture and other cruel, inhuman or degrading treatment or punishment. Adopted by the General Assembly of the United Nations on 10 December 1984, entered into force 26 June 1987. This was accessed from this website <http://www.ohchr.org/english/law/cat.htm> on the 24.10.2007.

doesn't have any idea that this happens. They find out post factum at the end of the year³²⁹

The failure of Ukrainian government to provide Conventional procedural rights may lead to the fact where individuals are returned to states where they might face persecution or the risk of torture or other cruel, inhuman or degrading treatment. Ukraine is until now not able to respect International Conventions because they do not want to understand that it is an obligation. Most of the officials still pretentiously think that it is a favour to receive and recognise asylum seekers. For the EU states to deport failed asylum seekers to Ukraine or consider Ukraine as a safe country is an act to minimise the Geneva Convention and other international conventions protecting human beings from abuse of their rights, torture and other cruel and degrading treatments.

In Ukraine, there is no law protecting an asylum seeker from being deported if his or her life is at risk in his or her home country of origin. If an asylum seeker is transferred into Ukraine, it is obvious that the Ukrainian government will refoule this person to his or her country of origin where his or her life is in danger of torture or other ill treatment. This is an abuse of Article 3 of the Convention Against Torture and as well an abuse of Article 3 of the European Convention of Human Rights ECHR. This lack of protection against torture has made the Ukrainian government to constantly deport Chechen asylum seekers back to Chechnya and mostly when they are in detention camps. This is confirmed by the UNHCR Ukraine draft, which states:

“The Border Services is also known to have contacted foreign embassies concerning the identity of asylum applicants, in contravention of its own instructions, to effect return before being ever accepted and/ or before receiving a determination of their asylum claim. Of particular concern is the practice of systematically denying Chechnya asylum seekers access to asylum procedure.”³³⁰

The Ukrainian officials in the Ministry of Internal Affairs and the Border guards were ignorant of the fact that deportation orders could be challenged in courts. And they were “unable to identify the institution tasked with review of the legality of deportation orders,

³²⁹ Human Rights Watch Vol. 17 No 8 (D), 2005, p.62.

³³⁰ UNHCR: Draft Ukraine May 2006, p. 13.

or with evaluating and making final determination regarding non-refoulement claims under Article 3 of the U.N Convention against Torture or the European Convention of Human Rights.³³¹

A country of this nature that is ignorant of the asylum procedure will obviously endanger the lives of asylum seekers by refouling them to a territory where their lives will be at risk of torture or other ill treatment.

³³¹ Human Rights Watch Vol. 17 No 8 (D), 2005, p.61.

Chapter V. Libya: An Example of Regional Protection Areas

1. Background Knowledge

1.1. State Policies Regarding Asylum Seekers and Migrants

Geographically, Libya is found in the Northern part of Africa bordered by the Mediterranean Sea on one side and the Sahara desert on the other. Due to the closeness of Libya to EU countries on the other side of the Mediterranean Sea, the EU states have as well converted Libya into a “Buffer Zone”

Libya today is a transit country because of its geographic position between other African states and EU countries. It is bordered by Chad and Niger to the south, Egypt and Sudan to the east and Algeria and Tunisia to the west. Libya is a very large country of 1,759,540 square kilometres (679,363 sq. miles) The Sahara Desert occupies the entirety of the country and a bigger part of the population lives on the Mediterranean coast.

With a distance of about 9,654km of maritime and desert frontiers, Libya is very close to Europe, this has made Libya long ago to be a destination country for asylum seekers, refugees and migrants from sub-Saharan Africans seeking security, peace and other opportunities in Europe

In recent days some of these migrants from sub-Saharan Africa use the geographical proximity of Libya to Europe to transit through Libya to Europe. The northern coast is approximately 1,770 kilometres long and is some 300 kilometres from Italy's closest Sicilian island, Lampedusa.

“Geography is not nice to us,” said Shukri Ghanim, General Secretary of the General People's Congress until March 2006. Libya is “between rich Europeans and poor Africans.” In late 2004, a European Commission report on the migration in Libya noted “a sharp rise in illegal immigration through the Sicily Channel and the strengthening of the Libyan transit route.”³³²

³³² Human Rights Watch: Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees. Volume 18, No. 5(E) September 2006, p. 15.



Fig. 10 Overview of the Camps in Libya ■

Source: Map No. 3787 Rev. 4 United Nations, June 2004, Department of Peacekeeping Operations Cartographic Section. The red spots indicating the camps are inserted by me.

Libya was colonised by Italy in 1911 and got its independence in 1951 under a monarchy that reigned until 1969 when colonel Mu'ammar al-Qaddafi headed a revolution known

as al-Fateh, a bloodless coup d'état that overthrew the king and made Qaddafi the "Guide of the Revolution"³³³.

Politically, Libya is one of the most authoritarian regimes existing in the world today with no civil society. All the Non Governmental Organisations existing in the country have either springboard from the government or have links to the government. The government does not allow the independent existence of political parties, groups or organisations with different ideas to prevail in the country. "The government grants the right of association to official institutions by virtue of Law 71 of 1972, which regulates associational activity in Libya. In general, there are no independent organizations in Libya, and the existence of such organizations would be considered contrary to the revolution, and therefore illegal. Law 20 of 1991 on the Promotion of Freedom sanctions the death penalty for anyone whose continued existence would lead to the disintegration of Libyan society."³³⁴ According to Qaddafi, political parties and elections do not reflect the true will of the people. Qaddafi in relation to the on going primaries to the American presidential campaign of 2008 said, the Americans; "want to make a change in their lives. They say their system is a failure, that their government is a failure, and that their elections are a failure."³³⁵ Qaddafi continued, ""the whole world will return to the model of the republic of the masses, to communes, to popular security, to popular defence, to popular capitalism, and to popular socialism."³³⁶ Referencing to these statements, a country without elections to permit the people express their will is the most democratic country, a country without political party or strong civil society coming directly from the

³³³ In Libya, colonel Mu'ammr al-Qaddafi is called "The Guide" because he does not see himself as a president or a king. He believes this positions are positions of power and dominance. This does not mean that he is not dominant. As many dictators do, they usually use soft titles or actions to qualify themselves. Quaddafi gives the impression that he is not at the top of the people. This is a false impression because every thing in Libya is in the hands or under his control.

³³⁴ United Nations Development Programme, Programme on Governance in the Arab Region: Democratic Governance > Civil Society > Libya. Beirut, Lebanon. Online:
<http://www.pogar.org/countries/civil.asp?cid=10#sub2> , accessed on the 28 March 2008.

³³⁵ Libyan Strongman Qaddafi Weighs In on American Presidential Race, Citing Democratic Call for 'Change'. In: Fox News, March 07, 2008. Online:
http://www.foxnews.com/printer_friendly_story/0,3566,335993,00.html, accessed on the 30 March 2008.

³³⁶ Libyan Strongman Qaddafi Weighs In on American Presidential Race, Citing Democratic Call for 'Change'. In: Fox News, March 07, 2008. Online:
http://www.foxnews.com/printer_friendly_story/0,3566,335993,00.html, accessed on the 30 March 2008.

people without being linked to the government is the most democratic society and a country where a leader can die in power since there is no challenge through the ballot box as in Libya is the most democratic society. "Associations engaging in political activity are illegal in Libya. Further, political activity is defined by Articles 2 and 3 of Law 71 of 1972 as any activity based on a political ideology contrary to the principles of the Al-Fateh Revolution of September 1, 1969."³³⁷ This can be seen with the Berber people who claim to be the aborigines or original people of Libya before the coming of the Arabs. Today, Qaddafi has silenced them and is portraying Libya as a strictly Arab state. Any demonstration coming from this region of the country is ruthlessly smashed. One of the Berbers told me, " We are not Arabs. We are the aborigines of Libya that have been destroyed and silenced by Qaddafi. We have our sign that indicates, one people, one culture and one nation. If this sign is seen with you, we are in a deep mess."³³⁸

Economically, Libya is a country with a very good economy with plenty of oil wells spread all over the country that have attracted many EU countries to rush for oil. "Oil in Libya was discovered late in the 1950s. In a short period of time oil discoveries were brought on-stream, particularly from the Sirte Basin. Thus, in the late 1960s Libya had become the world's fourth largest exporter of crude oil. This rush to raise production in Libya reflected not only the world's growing appetite for oil but also certain advantages the Libyan oil sector enjoys. First, Tripoli holds huge proven oil reserves – estimated at 36bn barrels, or 3.1% of world's total. Second, production costs are among the lowest in the world. Third, Libya produces high-quality, low-sulfur "sweet" crude oil. Fourth, the proximity of Libya to Europe is a big advantage in terms of ease and costs of transportation to a large and growing market."³³⁹

At the era Qaddafi came to power, Libya was a very poor country with a small population and with almost no migrants.

³³⁷ United Nations Development Programme, Programme on Governance in the Arab Region: Democratic Governance > Civil Society > Libya. Beirut, Lebanon. Online:

<http://www.pogar.org/countries/civil.asp?cid=10#sub2> , accessed on the 28 March 2008.

³³⁸ Interview with KD, a Berber in Libya who was demonstrating the suppression the undergo in Libya, this interview was conducted in Tripoli on the 29 of March 2006.

³³⁹ Bahgat Jawdat: Libya's Energy Outlook. Middle East Economic Survey, VOL. XLVII, No 43, 25-October-2004. Online: <http://www.mees.com/postedarticles/oped/a47n43d02.htm> , accessed on the 29 of March 2008.

In recent days, Libyan indigenous population numbered about 5.3 million.³⁴⁰

It is estimated that the number of legal migrants working in Libya is 600, 000, meanwhile the number of undocumented immigrants amount to about 750, 000. As an estimate, the number of migrants entering Libya in a year is between 75, 000 to 100, 000.

A composition of the Libyan migrant population, are migrants who went into the country for jobs and the rest are asylum seekers and refugees whose lives are threatened in their home countries and are in need of security.

Within the foreign population in Libya, some do not intend to live in the country but to use the country to transit into any of the EU countries since they do not find effective protection in Libya and due to the fact that EU states have blocked almost all the other safe possibilities migrants could use to enter Europe.

The past forty years in the history of Libya have served as an era of immigration flow into the country. Labour migration increased due to the discovery of hydrocarbons that enriched the country and transformed the country from a poor to a rich country. This discovery of oil and gas created different types of special jobs needing special labour that could not be found in Libya.

“Programmes included large-scale agricultural schemes such as the multi-billion-dollar Great Man-Made River project, which aimed to transfer water found deep under the desert to the coastal areas and thus to make Libya self-sufficient in food production.”³⁴¹

Today Libya’s economy is qualified as the most prosperous in Africa after, South Africa. But at the same time like in most African countries, Libya’s wealth is concentrated in the pockets of a small elite population and a great majority of the population suffer in poverty. Nevertheless, this oil and gas boom has attracted many Arabs from Arab countries like Tunisia and Egypt to migrate into the country. Egyptians do dominate in the teaching and agricultural sectors of Libya in recent days.³⁴²

Libya, a destination country because of its booming economy was not only attractive to citizens of Arab states but became very magnetized to sub-Saharan Africans in the early

³⁴⁰ Libya’s population Numbers 5.3 Million-Census, Reuters, June 1, 2006.

³⁴¹ Hamood, Sarah: African Transit Migration Through Libya to Europe: The Human Cost, Cairo: America University of Cairo, 2006, p.17.

³⁴² Hamood 2006, p. 17.

nineties. Different factors contributed to this: There was some sort of an open-door policy of colonel Mu'ammar al-Qaddafi, who was forced to turn to sub-Sahara Africans as he felt isolated by the Arab brothers at the time the air and arms embargo were imposed on the country by the UN Security Council in 1992 due to the bombing of the Pan Am flight 103 over Lockerbie in Scotland in 1988, and the UTA flight over Niger in 1989. Mu'ammar Qaddafi realised that Pan-Arabism did not support him and so turned to Pan-Africanism in order to combat the international isolation he was suffering.

"Nevertheless, in 1998 Qadhafi declared that Africans and not Arabs are Libya's real supporters. The Libyan state-owned radio 'Voice of the Arab World' was renamed 'Voice of Africa', a number of African leaders breached the UN embargo and a regional organization entitled 'Community of Mediterranean and Sahelian Countries' that included Libya and its sub-Saharan African neighbours was created. However, Libya's revived interest in sub-Saharan Africa is more a tactical move than a structural shift in its foreign policy. The Libyan-black African rapprochement reflects Qadhafi's disappointment with the limited support he has received from Arab countries in his efforts to confront the international sanctions that were imposed on Libya after the explosion of Pan Am flight 103."³⁴³

This new alliance system of Libya and sub-Sahara African states led to the signing of many bi-lateral and multi-lateral treaties that partially rescued Libya from international isolation; notably with Sudan in 1990 and several treaties with Chad in 1994.³⁴⁴ This was followed by the creation of the Sahel-Saharan states known as (CEN-SAD)³⁴⁵,

³⁴³ Huliaras Asteris: Qadhafi's comeback: Libya and sub-Saharan Africa in the 1990s. Harokopio University, Athens, Greece, the Institute of International Economic Relations, Athens. In: The Royal African Society (Eds.) Oxford journal: African Affairs, Volume 100, No. 398, January.2001,pp 5-25 Online :

<http://afraf.oxfordjournals.org/cgi/content/abstract/100/398/5> , accessed 09.04.2008

³⁴⁴ Pliez, Olivier: "De l'immigration au transit? La Libye, dans l'espace migratoire euro-africain". In: La Nouvelle Libye, Sociétés, espaces et géopolitique au lendemain de l'embargo Paris: Karthaga 2004, pp. 139-157.

³⁴⁵ CEN-SAD is Community of SAHEL-SAHARAN STATES. The head quarters of CEN-SAD is based in Aljazeera square Tripoli, in Libya, online <http://www.cen-sad.org/> , accessed on the 29.10.2007.

which is made up of 21 African countries,³⁴⁶ the main intention of this alliance system was to promote:

“ Free movement of persons, capital and interests of nationals of member states; the right of establishment, ownership and exercise of economic activity; and free trade, movement of goods, commodities and services originating from the signatory countries. At the same time, Libya ran an internal and external campaign situating Libya in the African domain and encouraging Africans to come to work in Libya, even by placing advertisement in daily African News papers”³⁴⁷

Reverting to this quotation, the treaties facilitated many sub-Saharan Africans to move to Libya and occupied some of the jobs and especially the poorly paid jobs that the Libyans never wanted to do in the new era of economic boom. Al-Qaddhafi stressed his open door policy at a September 1999 extraordinary summit of the Organisation of African Unity in Sirte, the region in Libya where he was born and today hosting the head quarters of the African Union (AU). In this very Organisation of African Unity (OAU) Summit al-Qaddhafi invited Africans with passports to enter Libya freely without visa for three months and could have easy access to work permit and residency than other foreigners. The call by al-Qaddhafi was answered by thousands of Africans.

Another reason for the presence of foreigners and especially sub-Saharan Africans in Libya is the country's 4.400 kilometres of mostly desert borders, which is difficult to control. Many sub Saharan Africans move irregularly through the desert and unable to be dictated by the Libyan Boarder Guards. This has caused the UNHCR Libya to say,

“If America with all the sophisticated materials and long standing experience to control and manage migration is unable to manage its boarders effectively, to stop Mexican asylum seekers and migrants entering the United States, how much more of Libya with its young experience in migration related issues to check a vast desert territory far more

³⁴⁶ Hamood 2006, p. 18.

and <http://www.cen-sad.org/>, accessed on 29.10.2007, member states are Benin, Bukina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Gambia, Guinea Bissau, Liberia, Mali, Morrocco, Niger, Nigeria, Senegal, Somalia, Sudan, Togo, and Tunisia.

³⁴⁷ CEN-SAD, online <http://www.cen-sad.org/> , accessed on the 29.10.2007

bigger than the American borders with Mexico with almost no sophisticated materials?”³⁴⁸

Many ministries are handling migration in Libya. FRONTEX writes; “According to the understanding of the mission members, the principle ministries dealing with irregular migration issues are the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice and the Ministry of Defence. Combating illegal immigration is a joint effort between various departments within these ministries. Operational co-ordination and responsibility is primarily vested in the Ministry of the Interior.”³⁴⁹

The Libyan government holds the point of view that all the foreigners living in Libya are “Economic Migrants” who are either in search of jobs to improve their economic situation or nursing the plan to enter the EU states. They rejected the fact of having asylum seekers whose lives are threatened. One top-level Libyan official, Sa’id Eribi Ephrem said,

“We do not have political refugees...the problem is Africans who came in the framework of illegal immigration.”³⁵⁰

According to the UNHCR in Libya, many of the Africans who enter Libya are in search of work as were promised by al-Qaddhafi. Meanwhile some of them use Libya as a transit region to EU states. The UNHCR continues:

“We are not saying that there are not genuine asylum seekers and refugees among the sub-Sahara Africans. There are some of them that we found after our procedure who are qualified asylum seekers. There are as well many of them who were deported from Europe who are today at large.”³⁵¹

³⁴⁸ Interview conducted with the UNHCR, in the head office based at Tripoli, Libya. This was on the 29 of March 2006.

³⁴⁹ FRONTEX is the new European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, based in Warsaw, in Poland. It became operational on the 3rd of October 2005. This above quotation is got from FRONTEX-Led EU Illegal Immigration Technical Mission to Libya, 28 May-5 June 2007, p.9.

³⁵⁰ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 15.

³⁵¹ Interview with the UNHCR Libya, 29 March 2006 in the head office in Tripoli

In many interviews conducted by me, “many³⁵² presented the two versions of the UNHCR, an Eritrean at Tripoli said:

“The war in our country is not strange to anybody. Many of us sitting here were threatened by the war in one way or the other and because of fear we had to abandon our homes, property and family members. We are in a mess here but we cannot go back because of the fear of death.”

Meanwhile a Sudanese said:

“ I am a catholic Christian. Some of the Muslims are waging war against us forcing us to be come Muslims. Any resistance leads to either disappearance or dead. I was living in the Dafur region where the Sudanese government is unable to guarantee protection to any of us due to this reason I had to flee from my beloved country. Though the situation is almost the same here in Libya where those of us black in colour are maltreated everyday or those of us Christians are immediately seen as Satan, the only difference is that there is no war to kill or make us disappear. But the insecurity in this country, forces some of us to risk our lives by using poorly made wooden boats to cross the Mediterranean to Europe in search for effective protection“.³⁵³

The Libyan government does not allow independent NGOs that can be critical on the issues of the states. The United Nations High Commissioner for Refugees (UNHCR) is not allowed to function freely because the Libyan government does not want the UNHCR to institute projects not coming from the government. As I talked with some of the members of the Revolutionary Movement Committee (RMC), the answer was:

“We do not want to create a state within a state. The UNHCR is a western created issue, which does not take into cognisance the culture, and Islamic religion and other social

³⁵² I am not going to use names of people in this section of Libya. For security reason, I pledged to withhold the names not to put people who gave me necessary information or accompanied me into some places. This will lead me to constantly use abbreviations.

³⁵³ Interviews with Africans from Sudan and Eritrea in Tripoli, Libya on the 18 March 2006.

and political specifics. The UNHCR is a product of the Geneva Convention, which the Libyan government did not sign. How can we function with what we did not ratify?”³⁵⁴

The UNHCR told me that they have not visited any other camps where asylum seekers are found except from the one in El-Fatah in the centre of Tripoli. The government does not allow them to the other ones they have heard are in very bad conditions. They were never in any of the camps in the Southern part of Libya.

In July 2004, the Libyan and the Italian governments signed an accord to manage, control, stop and receive irregular migrants by mounting land, air and sea patrols within their territories through cooperation and to construct detention camps but the UNHCR said;

“We do not know the clauses of this accord. We have asked the ministry of foreign affairs for a copy of this accord but we could not get it. We asked our UNHCR partner in Italy, they do not have it, so we do not know what is in the accord. We think it will be justified for an office like ours to have a copy of such an accord dealing with refugees.”³⁵⁵

The UNHCR officials are really afraid to be mentioned in interviews because of the Libyan state machinery of oppressors that can have a negative effect on them. Though their functions are limited, the UNCHR is still doing a lot depending on the slightest opportunity. For instance;

“In cases where refugees present themselves to the UNHCR office to claim asylum, the office process their applications. In their 2005 country operation plan for Libya, UNHCR noted a total of 11, 897 urban refugees registered with their office: the majority Palestinian (74%) and Somali (25%). The rest included a mixture of nationals from different Arab and African countries. 40% of the refugee population is estimated to be female.”³⁵⁶

³⁵⁴ Interview with Mr. A, a top official in The Revolutionary Movement Committee (RMC) in Libya, on the 24 March 2006 in Tripoli

³⁵⁵ Interview with the UNHCR Libya, 29 March 2006 in the head office in Tripoli

³⁵⁶ Hamood 2006, p. 23.

The Libyan state policy against smugglers and human trafficking is taking a stronger gear due to pressure from the European governments. As I was in Libya, an African informant working hand in gloves with Libyan police officers invited me to cover an arrest of some of the smugglers. The smugglers are composed of mostly Eritreans, Ghanaians, Nigerians, Libyans and especially top military officials. According to an interview, I was informed by some persons sent back from the high seas that:

“Smuggling and trafficking is a complex mafia net work where lives are at stake. It is organised by the different societies found in Libya and always protected from some top military officials until the boats leave the shore. The reason that the different societies do organise it is because we live in our societies in relation to our countries of origin.”³⁵⁷

The organised smuggling groups usually send members from different nationalities to bring together those who are ready financially and spiritually to go over the high seas. These people are assembled in a particular house under very harsh conditions until the required number for the journey is got. During this period of gathering the people to travel, the smuggling gangs are constructing or reassembling the boat.

The Libyan authorities said smuggling and trafficking networks are found both in Libya and out of Libya. Those who assist the migrants through the desert into Libya and those who carry the migrants across the Mediterranean Sea into Europe. The Libyan government officials claim Libya has set up different mechanisms to check and stop all forms of smuggling and trafficking of asylum seekers and migrants. According to FRONTEX.

“Authorise security bodies of the Great Jamahiriya take up tracing these criminal groups. The efforts have resulted in apprehending many outlaws. Last year 2006, Libyan authorities detained 357 gang members. The total number of organisers of these illegal operations arrested since the beginning of the current year 2007 till 28/05/2007 reached 53 persons, at the same time vehicles and 17 boats used for these purposes were confiscated.”³⁵⁸

³⁵⁷ I conducted an interview with a Ghanaian who attempted to reach the Island of Sicily but were sent back on the high seas by the EU marines. This interview was conducted on the 20th of March 2006 in Tripoli.

³⁵⁸ FRONTEX-Led EU Illegal Immigration Technical Mission to Libya, 28 May-5 June 2007, p.32.

The new measures adopted by the Libyan government is to strengthen the new era of cooperation with the international world after one and a half decade of sanctions due to terrorism that led to the blowing off of two flights and the development of weapons of mass destruction. Libya renounced her nuclear weapons programmes and abandoned her past as a rogue state by:

“Paying financial compensations to the victims’ families in the 1986 attack on the La Belle disco in Germany, the blowing up of a UTA French airliner over Niger in West Africa in 1989, and the 1988 bombing of a Pan Am jet over Lockerbie, Scotland.”³⁵⁹

The romantic resumption of the Libyan EU relationship has made Libya to institute detention camps that will facilitate the detention of migrants using Libya to make their way into the EU territory. These detention camps, police cells are not easily accessible even for people living in Libya worst of all, if one is from a human rights team. To get into the camp in a group, one person in the group has to produce a document, which will be registered in a book at the sentinary of the camp.

I was refused entry with my team after one of our members already registered his name. On this day, the excuse was that visiting time was over. From every indication, we were suspected either to be spies or to belong to a human rights group. As we left the prison, some secret officers until late in the evening pursued us. It so happened that we hired a taxi for the day. Whenever I have to visit any of the camps, I did not go with my guide because we already had an argument where he claimed I was invited in Libya for tourism and not for visit of deportation prisons and detention camps.

The Libyan government has engaged in massive deportation of sub-Sahara Africans. The deportations are done in various forms. The sub-Sahara Africans are either deported to their countries of origin or in the desert. The deportation of the Africans in the desert is not only done by Libyans but by other Arab states as well, what this author terms as ping-ponging of sub-Sahara Africans in the desert will be developed in a later chapter, deportation.

³⁵⁹ Bahgat Jawdat: Libya’s Energy Outlook. Middle East Economic Survey, VOL. XLVII, No 43, 25-October-2004. Online: <http://www.mees.com/postedarticles/oped/a47n43d02.htm> , accessed on the 29 of March 2008.

1.2. The Legal Framework

Libya is neither a signatory of the 1951 Geneva Convention nor its Protocol of 1967 guaranteeing the protection of refugees. During my discussions with some of the officials in Tripoli, some of them hold firmly that the Geneva Convention and its Protocol were adopted in conformity to specific issues happening in Europe before 1951 and not in the whole world. In order to strengthen this argument, the Libyan authorities said:

“The OAU was forced to come up with its definition of who is a refugee because so many aspects forcing individuals to flee from their homes of origin in Africa to seek asylum were not addressed in the Geneva Convention. We think the Geneva Convention is a regional document that the Europeans and Americans have universalised without taking into consideration other regions of the world.”³⁶⁰

This Libyan’s position was confirmed by FRONTEX, which says:

“In respect of refugee law, the mission was advised that Libya continued to have problems with signing up to the Vienna Convention which was viewed as a “one-size-fits-all” law which did not take account of Libya’s own problems and was not in its interests to sign.”³⁶¹

It should be noted that the African Refugee Convention covers and engulfs the terms of the 1951 Geneva Convention of who is a refugee and its Protocol of 1967 in its paragraph 9 of the Preamble which states;

“Recalling Resolution 26 and 104 of the OAU Assemblies of Head of State and Government, calling upon Member States of the Organisation who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,”³⁶²

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³⁶⁰ Interview with a Libyan authority of the RMC in Libya, 24 of March 2006 in Tripoli

³⁶¹ FRONTEX led EU Illegal Immigration Technical Mission to Libya from 28 May-5 June 2007, p.9-10.

³⁶² Paragraph 9 of the Preamble of the Organisation of Africa Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa on 10 September 1969, Concluded in Addis Ababa, entered into force on the 20 of June 1974.

Since Libya is a party to the African Refugee Convention without reservation, she is obliged to respect all the clauses.

Libya is a signatory to the Convention on the Rights of the Child (CRC) since April 15, 1993, which, inter alia in its Article 22 subsumes specific terms relating to refugee children. Aspects or terms covered by the 1951 Convention of who is a refugee.

Indeed, Libya is a signatory to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) since May 16, 1989, Article 3 of CAT, prohibits refoulement of a person to a place where his or her life could be tortured.

Though there is no strict distinction in Libya between asylum seekers, refugees and migrants because Libya authorities say all the migrants are "Labour Migrants" and which makes Libya not to recognise the fact that there are refugees on its territory, some references are made on how to protect refugees on certain laws in Libya.

On the 11 of December 1969, the Libyan Constitutional Proclamation entered into force as "The Guide" al-Qaddhafi took over the throne from the King. This instrument prohibits the extra diction of political refugees"³⁶³

At my research time in Libya, Libya did not have any concluded Constitution. The country is until today using a Constitutional Proclamation and other laws, which have Constitutional power in the country.

"The other laws deemed to have constitutional status are:

The Declaration of the People's Authority, adopted March 2, 1977

The Great Green Charter for Human Rights of Jamahiriyan Era, adopted June 1988

Law 20, "On Enhancing Freedom" adopted 1991."³⁶⁴

The Libyan highest jurists like professors of law and lawyers that judicial processes must respect these laws and it is the right of the citizen to appeal if this procedure is not respected say it.

³⁶³ Libyan Constitutional Proclamation of 11 of December 1969.

³⁶⁴ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 79.

Article 21 of Law 20 “Enhancing Freedom” states that; “the Great Jamahiriyah is a refuge for the oppressed and strugglers for freedom. It is impermissible to hand over refugees under its protection to any party.”³⁶⁵

In Libya there are laws governing entry, stay and departure of foreigners. The treaty of the CENSAD is a special regional treaty guaranteeing entering, working and circulation of sub-Saharan foreigners, one should pay attention to domestic laws guaranteeing specific and defined domain.

The main domestic law determining entry, stay and departure in Libya is Law No. 6 of 1987. This law enshrines that foreigners must have a valid visa to enter, reside in and leave Libya. This law was amended by Law No. 2, of 1372 (2004). This law punishes any foreigner who does not respect the conditions to enter, reside in and to leave Libya. According to Article 19 of the amended law, those who do not obtain the valid visa, violate the conditions to reside in Libya and stay longer as stipulated on the visa in the country would be liable to “a prison sentence without fixed duration and a minimum fine of 1,000 dinars (approximately \$ 800).”³⁶⁶

In relation to my interviews with some migrants and asylum seekers in Libya, it is said that, to have a job, one is supposed to possess a red or green card. Any foreigner already living in Libya without these cards is expected to register and obtain a red card, which is for a temporary stay for three months, and with the red card he or she can look for a job and work to fulfil the conditions to obtain a green card. Nevertheless, if there is a job in a particular site, the job owner has to find out if there is no Libyan who can take the job. Mr. P told me that he found many job opportunities but he was always told to wait for some weeks for the owner to find out if there is no Libyan who needs the job.

A job can only be done when one has a contract with the employer. In this case, most employers usually exploit the foreigners or refugees. As Mr. P. puts it, if there is a job

³⁶⁵ Human Rights Watch: Libya: Words to Deeds, The Urgent Need for Human Rights Reform. Volume 18, No. 1(E), January 2006, p. 79. Online: <http://hrw.org/reports/2006/libya0106/12.htm>, accessed on the 29.10.2007.

³⁶⁶ Hamood 2006, p. 20.

and a foreigner comes up to take it, the job owner will reduce the salary drastically. At times the job owners prefer not to sign any contract with the foreign worker. They do this to evade tax declaration since one must be registered at the tax office.

In Libya, before a foreigner works he or she must deliver a medical certificate proving the fact that he or she is not infected by HIV/AIDS or any other sexually transmitted disease (STD). The medical certificate is obtained after a serious medical check-up. First of all, there is a general check-up to see that the person is in good shape then to specific checks for HIV/AIDS and other sexually transmitted disease. The work permits are usually issued for one year and can be prolonged.

On 10 May 2005, the official Libyan Jamahiriya Broadcasting Corporation reported a statement made by the ministry of the interior notifying foreign residents, they must have authorised visa entry or they will be sent back. Three documents are required to make a foreigner eligible for employment in Libya: a legal visa, valid passport, and authorised health certificate...a contract for employment also appears to be a requirements."³⁶⁷

In relation to Law No.6, Article 16, the various reasons on which the Director of passport and Nationality could abrogate a resident's permit are stated. If it is seen that a person is a danger to the security and safety of the state both internally and externally as well as to the economy, public health or if a person is a burden to the state. If a person is an ex-convict due to the fact that he or she violated honour, loyalty and security. If the situation for which he was granted the permit is no more in function as well as if a person disrespects the conditions he was granted the permit. Article 18 of Law No. 6 defines the conditions and procedures to deport a foreigner including the administrative authority to detain:

"The Director of Passports and Nationality has the right to restrict a foreigner who is to be expelled to a certain area of residence or to instruct him to visit the nearest security location (e.g. a police station) on certain dates until his date of expulsion. He is also allowed to detain him until the completion of expulsion arrangements. This foreigner is

³⁶⁷ Hamood 2006, p. 21.

not to be readmitted to Libyan territory without a substantiated decision by the Director of Passports and Nationality.”³⁶⁸

There is Article 19 of amended Law No.2 in Libya that sanctions smugglers and traffickers of human beings into and out of the country. This sanction is done on monetary terms and an imprisonment term. This is substantiated in a statement by the Ministry of the interior on May 10 2005, on the official Libyan Jamahiriya Broadcasting Corporation that:

“The Ministry stated its intention to take appropriate action against anyone, even foreigners and people smugglers who violate legislations, including a prison sentence of more than a year, and a fine of more than LYD 2,000”³⁶⁹

“Provided no other law is violated, then the following persons will be sanctioned by imprisonment and/or a fine of at least 2,000 dinars;

Whoever knowingly makes false statements and presents incorrect information or documents in order to facilitate his or another person’s entry, residence or exit from the country in violation of the term of this Act.

Whoever enters, stays in or exits in the country without the required visa, issued from the relevant authorities in accordance with the terms of this Act.

Who ever violate the conditions of the visa issuance, extension or renewal?

Whoever stays in the country after receiving an order to depart by the relevant bodies, in accordance with the term of this Act?

Who ever hire a foreigner in contravention of Article 9 of this Act“.³⁷⁰

The above laws are not the only laws dealing with foreigners in Libya. There are other laws defining what is expected from a foreigner when either he or she enters, resides or leaves Libya and the consequences if these laws are not respected.

Law No. 4 of 1985. Stipulates that Libya is to issue travel documents to refugees living in Libya. In relation to this law, its Article 7 states only to Palestinians that the travel

³⁶⁸ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 83.

³⁶⁹ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 21.

³⁷⁰ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 84.

documents are issued. The recognition of the Palestinian refugees by the Libyans is because Libya is a member of the League of Arab States (LAS).

“The League of Arab States (LAS) was established in 1945 to coordinate relations and activities of member states. The League has attempted to create regional standards for protection of Palestinian refugees displaced in 1948 based on provisions set forth in League resolutions and in the 1965 Casablanca Protocol.”³⁷¹

The Palestinian refugees benefit from many rights that recognised foreigners based in some of the Arab states do benefit. This is in relation to LAS and that is why the Palestinian refugees in Libya have a lot of rights; “Political considerations and domestic law often trump the standards set forth in LAS resolutions and the Casablanca Protocol. Despite the obligation to provide the same treatment as nationals in the areas of employment, the right to leave and enter, travel documents, and visas and residence, treatment accorded to Palestinian refugees in Egypt, Libya, Iraq, Kuwait, and other Gulf States is often similar to protection standards accorded to foreigners.”³⁷²

According to Human Rights Watch, certain laws of the “General People’s Congress, Order No. 247 of 1989 on the executive regulation of Law No. 6 of 1987, regulating the admission and residency of foreigners, Law No. 10 of 1989 concerning the Rights and Duties of Arab Citizens in the Libyan Arab Jamahiriya, ...General people’s Congress Order No. 260 of 1989 concerning employment conditions” and “General people’s Congress Order No. 238 of 1989 concerning foreign employees“:³⁷³

Reverting to these different laws, Law No. 247 of 1989, defines the border point how foreigners should enter Libya, the fees and conditions to enter Libya. It determines foreigners who are not allowed to enter Libya and those allowed to enter Libya. Before I

³⁷¹ “Casablanca Protocol”, Protocol for the Treatment of Palestinians in Arab States September 1965. Reprinted in The League of Arab States and Palestinian Refugees' Residency Rights. Abbas Shiblak (compiler). Monograph 11. Ramallah: Shaml, 1998.

Online: <http://www.badil.org/Documents/Protection/LAS/Casablanca-Protocol.htm> , accessed 04.11.2007.

³⁷² “Casablanca Protocol”, Protocol for the Treatment of Palestinians in Arab States September 1965. Online: <http://www.badil.org/Documents/Protection/LAS/Casablanca-Protocol.htm> , accessed 04.11.2007.

³⁷³ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 84.

went to Libya, the travelling Agency based in Germany that organised the visa warned not to have Israel visa in the passport because it will be a ground for the Libyan embassy to reject an application for a Libyan visa.

Law No. 10 of 1989, grants rights to all Arab citizens to enter and reside in Libya but not the sub-Sahara Africans. More to that Order No. 260 of 1989 of the General People's Congress gives priority of employment to Libyans and Arabs. The Central Employment must approve employment of other foreigners. Meanwhile Order No.238 of 1989 of the General People's Congress permits the employment of foreigner only in case the Central Employment Bureau approves the person and this law defines the conditions and procedures for the employment of foreigner

2. Refugees Status in Libya

As earlier said, Libya is not a signatory of the 1951 Geneva Convention and it's Protocol of 1967 guaranteeing the Rights of asylum seekers. Though Libya is a signatory of the African Refugee Convention, Libya has not got any formal Refugee Status Determination procedure, which could be used to distinguish migrants from asylum seekers and refugees. This has led to prolonged detention of migrants, asylum seekers and refugees, legislative weaknesses, UNHCR supervisory capacity not recognised and respected, protection risk faced by women and children in Detention camps, access to required services not guaranteed, lack of registration procedures, the principle of deportation or non-refoulement not respected and vast denial of rights of asylum seekers, refugees and migrants.

2.1. Libyan's Government Position to Asylum

Ensuring access to asylum seekers and protection to refugees is not a priority of the Libyan government's agenda. The Libyan government is more concerned on stopping, management and deportation of undocumented migrants based in the country. A senior Libyan official, Muhammad al-Ramalli said; "we do not have a law for this."³⁷⁴ It is believed that the country does not have asylum seekers and when a problem does not exist in a country, one does not need a law. To them, an asylum law can only come into existence when people start complaining that they need asylum.

³⁷⁴ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 20.

Meanwhile there is the fear that if the asylum system is created, there will be an influx of asylum seekers into Libya. This is seen in the declaration of the General Director of Consular Affairs at the General People's Committee for Foreign Liaison and International Cooperation, Ali Mdorad who said; if Libya offered asylum, the asylum seekers will come "like a plague of locusts."³⁷⁵

The treatment of migrants in Libya does not take into consideration if the person is a refugee, asylum seeker or migrant. The reason is that there is no clear distinction of this class of people. The Libyan government considers all of them to be "Economic Migrants". Nevertheless it should be emphasized that no matter the method in which the government is steering the argument, it is clearly written in certain laws like the Constitutional Proclamation of 1969 that "the extradition of political refugee is prohibited." And Law No. 20 of 1991, "On Enhancing Freedom," states, "the Jamahiriya supports the oppressed and defenders on the road to freedom and they should not abandon the refugees and their protection."

Since the Libyan government does not make a clear distinction between asylum seekers, refugees and migrants, the conditions of these people in Libya will be dissected in this author's research work in Libya in detention camps as well as in the society with the Libyan population.

3. The Socio-Economic Conditions in Detention Camps

The state Border Service controls entering and exits into the territory, which includes entry through the desert. The treatment of migrants and asylum seekers differ greatly. Those from sub-Saharan Africa are usually brutalised meanwhile those from Palestine are usually accepted and treated fairly. There is no Refugee Status Determination procedure so when the border guards arrest asylum seekers or migrants they are brought into a detention camps where they are detained for an undefined period. The detention of prospective asylum seekers and migrants is a step for deportation without processing why they entered the country. Those found in detention camps are either caught as they tried to enter the country, during general arrests in the urban centres or when taking a boat to cross the Mediterranean to the EU states. The Socio- Economic situation will be studied closely to justify the fact if Libya is a safe country for asylum seekers, refugees or

³⁷⁵ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 20.

other migrants or not. It will also determine Libya's relation to international treaties and the respect of human rights.

3.1. Accommodation



Fig. 11-12 Overview of Camps in Libya (Sebha and Northern Coast)

Source: European Commission, Report of Technical Mission to Libya on Illegal Immigration 27 Nov – 6 Dec 2004

The detention camps visited are not isolated in forest since Libya is a desert country. Some of them are found in the cities but are surrounded by very high walls with barbwire at the top or iron with sharp heads. Meanwhile others are found deep in the desert especially in the Southern part of Libya.

The conditions in which the detainees live are sub-standard. And this conditions are almost the same in the different camps visited except in el-Felah where because of international pressure and constant visits of UNHCR and other human rights groups the authorities use it as a standard to show how the detention conditions in Libya are. As a visitor, one is not allowed to go to where the detainees are sleeping. But the authorities will bring the detainees to you outside on a corridor with a bench so that you can talk with he or she under close supervision of the guards.

In the detention facility in Sebha at the south of Libya about seven hundred and fifty kilometres from Tripoli, where most of the migrants come in through the desert, the rooms are always full. J, from Ghana said in a room of about 10 x10 square metres, over one hundred people shared it. The rooms were overcrowded without space to

accommodate detainees. There were no provisions for beds, pillows or blankets. Everybody was obliged to sleep on the floor. The incident of overcrowding was hard.

“ As they brought us into the room, we met those who were already there. There was no space on the floor again so we went on the corridor where people wash their mouths in the mornings. That is where they asked us to sleep. We were packed inside like sardine. No breathing space and we all had to sleep on the floor, without any light in the rooms. At a certain day they had to transfer us to Tripoli, they brought us to a room where we slept that has never been kept clean. I just pushed the racks found on the floor like others and we slept on the floor in a very dirty room and air tight and full of empty litres.³⁷⁶”

In Kufra still in the south, some Somalian prospective asylum seekers and migrants were detained in a cell without beds just like those in Sebha. The cell, which was about 5x5 square metres accommodated over thirty of them. They said:

“To sleep was a problem. We had to sleep on the hard floor for over ten months, our dresses were very dirty and we realised that we smelt but we got used to it. The cell had a very small window a little bit high on the wall which was some how difficult to reach as we tried several times to escape.”³⁷⁷

“Beyene remember very well his time in Libya detention. We were at least 700, he recounted. 100 Ethiopians, 200 Eritreans, and 400 Sudanese. We slept on the floor upon one another, because of lack of space. We ate once a day, 20 gram of rice and a loaf of bread...every night they took me to the courtyard and was obliged to do press-ups. When I could no more, they gave me some beatings.”³⁷⁸

Misrata is about two hours drive from Tripoli, in the camp in Misrata, the accommodation facility is very poor. The detainees do not have beds but have to sleep on the floor. In a

³⁷⁶ Interview with J. from Ghana, this was conducted on the 20th of March 2006 in Tripoli.

³⁷⁷ Interview with a group of Somalian who were detained in Kufra facilities for over ten months in very inhuman conditions. This interview was conducted on the 24th of March 2006 in Tripoli.

³⁷⁸ Johnson Dominic: Libyens Abschiebelager. Weg in die Unmenschlichkeit. In: taz, die tageszeitung, 13.11.2007, website: <http://www.taz.de/1/politik/afrika/artikel/1/weg-in-die-unmenschlichkeit/?src=SZ&cHash=0ed044ca91>, accessed on the 20.November 2007.

small room built to accommodate four people, about twenty people were found inside since the authorities do not have enough infrastructures. Three Nigerians who were apprehended as they tried to use “Lampa-Lampa”³⁷⁹ to cross over to Italy through Lampedusa said;

“One could not sleep because of lack of space. We were overcrowded in a small room. The room is an emergency room but we spent about a year. During summer, it is very hot because of the crowd. We have to sit facing one another and if some body wants to displace his self it affects the whole room. It was better not to be moving too much because it made the whole room uncomfortable.”³⁸⁰

Feeding in Detention Camps

The nutritional value of the prospective asylum seekers and other migrants is very poor in all the detention facilities in Libya. In Sebha, the food the detainees eat is not usually sufficient. A group of migrants from Niger said they were dumped in a cell without food. When they complained of hunger, the authorities told them they do not have food to give them. They ate nothing on the first day they were arrested. From the next day, they were supplied with poorly prepared rice. The rice was watery and tasteless and that is what they ate almost every day. If any body tried to complain that he or she was not to eat because the food was not good, the police officers will get the person well beaten. The group of migrants from Niger said:

“We used to eat on sand and had not to take our heads up. If any body tried to take up the head when eating, he or she will meet a hard stroke on the body. There was no room to complain but to eat. All the detainees in Libya are vulnerable and most of them fall sick because of the poor food imposed on us. We have to eat very fast as if we were on a battlefield. It is sad the manner we were treated. There is no human dignity.”³⁸¹

³⁷⁹ Lampa-lampa is the name given to these fragile boats that carry the undocumented migrants to Europe. The name Lampa-lampa is coined from Lampedusa the Sicilian Island after the incident that took place in 2004 where undocumented immigrants were caught and deported back to Libya.

³⁸⁰ Interview with a group of Nigerians in the Madina market in Tripoli. This interview was conducted on the 29th of March 2006.

³⁸¹ A group of immigrants from Niger, this interview was conducted in Tripoli on the 26th of March 2006.

These migrants from Niger recounted that since they came to the camp in Sebha, most of them developed running stomach because their stomachs could not contain the very poor quality of the food. They had to purge immediately after each meal.

“That was the only way some of us could protest that the meal was not good since we were not allowed to say it verbally. We lost a lot of weight before we came out from the detention camp, we were very slim, unfortunately, we realised that our strategy was falling on deaf ears and blind people. In most of the cases, that did not move the Libyan police officers or border guards. They gave us the impression of being happy when they saw somebody sick after haven eaten the poor food”³⁸²

In the morning in this facility, they were served with tea (Shai as called in Libyan language) without any bread or something edible to accompany the tea. They usually bring them out on the courtyard to be served with tea or food.

In the facility in Salah al-Din in Tripoli, the detainees went on strike in 2006 after my trip to Libya. In several telephone interviews with some contact persons who went to this facility, so many nationalities from different countries were on strike because of the poor way of feeding. They were given a glass of water with loaves of bread in the mornings and evenings. The detainees could not sustain this and went on strike. It is said about 26 of them were shot by the police officers who opened fire on demonstrators. In this facility, there were sub-Sahara Africans from Benin Republic, Senegal, Bangladesh Cameroon and Côte d'Ivoire, Ghana and Nigerians. Diplomats from these countries had to rush to the facility to rescue their citizens. The Cameroonian representative in Libya negotiated and twelve Cameroonians were deported back to Cameroon than to continue in the facility under the very poor conditions

In Misrata, the detainees eat very insufficiently and the standard food was rice that was poorly prepared. In an interview with some Nigerians, they said that they have to live on bread and rice until they were realised. They said they were malnourished and due to that they usually fall sick though no body took their sickness serious.

The issue of insufficient food could be seen when the detainees are transferred from one facility to the next in a special designed truck, which can contain about a hundred

³⁸² A group of immigrants from Niger, this interview was conducted in Tripoli on the 26th of March 2006.

people. In one of the incidents, a Cameroonian, P, said they were carried in a long truck for about seven hundred and fifty kilometres from Sebha to Tripoli. In the truck, there were women and children. The children were below the ages of ten. In course of the journey, the truck got spoilt. The detainees were locked up and heavily guarded while the truck was repaired. A group of Cameroonian concluded:

„We saw how children were being tortured without water and food for about eighteen hours. They were crying of hunger and dehydration, the women and everybody. It was a hot day and were being transferred to Tripoli, a distance of about seven hundred and fifty kilometres with children in a closed truck with very small windows sealed with glass, we were not able to breath well. I felt very bad but when I looked at the children, I felt worse because I saw how children were tortured this did not shake the police officers in any way. After the truck was repaired they continued the journey without any food or water for anybody. The journey lasted from 8.a.m. to about 3.a.m. in the El-Felah detention deportation camp. „³⁸³

Sanitary Condition

The camps are very dirty inside and lack infrastructures to sustain the number of detainees. In Sebha, in a room where there were about a hundred and thirty people, only one tap was found. J from Ghana said:

“We have to line up to wash our mouths or to drink water. The tap is connected from outside with a tube and the water does not flow very well.”³⁸⁴

The other aspect of poor sanitation are rooms that have not been swept for a long while and when the Border Service or police officers arrest migrants and bring there, they dump them in these rooms in their dirty state. A group of Somalia's say when they were brought in the Sebha detention camp for the first day; they were forced to sleep in a very dirty room full of gallons, empty litres, racks, old papers and dust. There was no place on the floor but everybody had to use his hands to push the dirt in order to have a little space to sleep.

³⁸³ A group of Cameroonian I interviewed on the 20th of March 2006 in Tripoli.

³⁸⁴ Interview with J. from Ghana, this was conducted on the 20th of March 2006 in Tripoli.

Toilet facilities were limited. In a room of over one hundred people, there was only one toilet. The detainees tried to keep this toilet clean but it was not possible. The toilet is stinking because it is improperly used. The detainees clean the camp and the toilets inclusive and usually the authorities do not provide them with materials like gloves or detergents.

In Kufra detention facility, the detainees do not bath themselves and have to do all the work at the camp. They are the ones to keep the camp clean and after each day clean up action, they sleep with sweat on their bodies. An Ethiopian Endreas said;

“For about one year I was in the prison, I never took a shower. I even forgot that there was shower. The very poor condition preoccupied my mind than taking a shower. We were all stinking but there was no other solution. In the detention camp, if one scratched the body, a thick black scale will be falling on the ground. That is dirt that has accumulated on the body due to the long duration without shower.”³⁸⁵

In Sebha, as earlier said there was just one tap which the water was connected from outside that the detainees could drink hurriedly. There was no enough provision to take a shower. The group of Muslims from Niger said those police officers are committing “Haram” or a sin as Muslims, they do not allow other Muslims to conduct ablution before praying. We have to pray and before we pray as Muslims, we must conduct ablution but that is not an issue to the police and Boarder Service.

The poor sanitary conditions are common in all the detention camps of Libya. In Misrata, the detainees could not have a comfortable bath. They have to wash with water brought to them in a plastic container.

“Anebesa stayed with twelve women in a small cell that had no shower. They washed with water brought to them in plastic bottles and were allowed only one trip to the toilet a day...the conditions were extremely unsanitary, and many of the women fell sick. She said that one Ethiopian woman died after she went on a hunger strike to protest the conditions, but she could not recall her name”³⁸⁶

³⁸⁵ Interview with Endreas from Ethiopia, this interview was conducted on the 21st of March 2006 in Tripoli.

³⁸⁶ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 45.

In most of the camps like in Sebha, Kufra and Misrata the prospective asylum seekers and the migrants are closely locked up. The Border Service or police have not programmed a time for the detainees to go out for fresh air or sunlight. There are no facilities for sports. Some former Chadians detainees in Sebha said:

“We were closely locked up. The only time somebody could go out is when there is food and in this case because of the overcrowded rooms we were allowed for about ten minutes to eat. We have to eat very fast and go back into the cell. At times when the authorities need somebody with handwork, say builder, painter, plumber, mechanic, farmer or carpenter such a person could go out to work. Without that all of us were locked up. Another instance where somebody could go out was when the courtyard was dirty and they needed people to keep it clean. The detainees for no payment do the work. During this time that we were out, there were heavily armed police officers behind us to prevent somebody from escaping.”³⁸⁷

3.2. Specific Problems Faced by Women and Children

In most of the detention facilities, women have been suffering from Sexual and Gender Based Violence (SGBV) practised by Libyan Boarder Guards and police officers. Since the women and men are usually separated, most of the police officers or Boarder Guards often intend to have sexual intercourse with the women against their consent. Some Nigerian ladies who were detained in Sebha said they usually past half of the nights struggling against different officers who wanted to have sex with them. These ladies were caught as they tried to enter Libya through the Libya- Niger borders. There were about eight people from different nationalities. The others were male and they were taken to a different section. Out of pains and some sort of shame I realised on the faces of the ladies that it was difficult to narrate their experiences, they said the officers always come in groups to demand for sex.

“When we refused a particular group, the next group will come. We shouted for mercy but at night nobody could hear us. What we did was always to keep guard and always to react at once. At times they made promises to release us from the detention facility if we

³⁸⁷ Interview with some Chadians who were detained for over eight months in the Sebha detention facility. This interview was conducted in Tripoli on the 20th of March 2006.

accepted to have sex with them. They usually use different strategies. When their tricks did not succeed, they resorted to the use of force. They said we could do what ever we want with you here. Nobody can question us. You either accept or we execute force...”³⁸⁸

A group of Chadians were very disgusted in the manner the police officers were touching the girls in their group with whom they entered the country. The men were separated from the women and the police officers made as if they were searching them to know what they carried. The Chadian men said;

“This Border Guards were really impolite to the women, touching their breasts, buttocks and other parts of the body without any respect. We think it is unfair the manner in which they treated the ladies. We could not speak because we already received enough beatings. They have several inhuman methods to silent the people they apprehend. The women felt helpless, frowned their faces and tightened their bodies meanwhile the officers carried pseudo smiles on their faces trying to attract the ladies. They are all opportunists abusing their images and their country.”³⁸⁹

The male guards have always threatened the women detainees sexually in the detention facility in Misrata. Anebesa described the manner in which the women as a form of self-defence lived:

“When ever we needed to collect food, we women all went together, all thirteen of us, so that we never left a woman in a room alone. This was successful in preventing attacks. In the same way, at night, the male guards would come with a set of keys and let themselves into our cell. We would always wake each other up when this happened and sit down in a group and start crying and screaming, until they gave up and went out.”³⁹⁰

The women have no privacy as they are packed up in one room. If one woman is on her menstruation period everybody has to know. There is no provision for pad to protect

³⁸⁸ Interview with some Nigerian women from the Sebha detention facility, this interview was conducted on the 1ST of April 2006 in Tripoli.

³⁸⁹ Interview with some Chadians who were detained for over eight months in the detention facility in Sebha. This interview was conducted on the 20th of March 2006 in Tripoli.

³⁹⁰ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 45.

blood flow during menstruation. No enough water and the police officers are the first to laugh in case they see that blood stained the dress of a lady. The women from Chad said:

“Blood had to trickle down the legs of one of their colleagues and smeared the floor because there was nothing to use to stop it from flowing. In Libyan toilets, there is no toilet paper because of the culture. They have a tap but one cannot use a tap to stop menstruation blood from flowing. We were forced to tear one of our loincloths to stop blood from trickling down our legs at the period we were there. We washed these pieces of loincloth and kept for the next month. We adopted this strategy on a day that the police officers discovered that the dress of one of our friends was destroyed by blood, instead of assisting us, they treated us much more like pigs.”³⁹¹

Pregnant women are locked up to sleep on bare floor like any other person. DD was apprehended as she was about to board a boat (Lampa-lampa) at the outskirts of Tripoli to Europe; the police was already on alert. She had a pregnancy of about six months. As the police took them to the facility in Misrata, the pregnancy did not play any role. DD and the others were taken to the detention facility in Misrata where they were detained. DD, who is still in Libya said,

“I passed a very hard time. To sleep on the floor, I did not know to turn left or right since I could not sleep on my stomach. It was really stressful, the one-month I spent in the facility. My boy friend had to bribe before I was let out.”³⁹²

The needs of detainee women are usually not identified. Women need to be offered maternity health care and other sexual health care.

Children have always been locked up with their mothers for a long time in different facilities. When the Border Guards threatened to have sex with female detainees or are

³⁹¹ Interview with some Chadians who were detained for over eight months in the detention facility in Sebha. This interview was conducted on the 20th of March 2006 in Tripoli.

³⁹² Interview with D.D. who was locked up in Misrata for one month, this interview was conducted in Misrata, Libya, at their home on the 2nd of April 2006.

beating the male detainees, the children are watching. The Nigerian ladies who were locked up said:

“One of us was carrying a child and each time the guards came to seek for sex, they did it in front of the child. No matter how small a child can be the child can always feel that something is wrong as women were screaming and crying. At times the child joined the women to cry. It is not only on the issue of sexual abuse that the children were frightened. During the time that the guards were beating us especially the men, the children usually cried.”³⁹³

The children are locked up without sunlight, fresh air or play ground with their parents and other adults in a congested room that the children are obliged to sit on the parents or always carried by somebody else. At times at night when everybody is sleeping the children will urinate on the floor, which will spill on the bodies of others. The children were obliged to that because there was usually no space to move to the toilet. To go to the toilet means jumping over other people. The Nigerian women from the Sebha facility said:

“The children were incarcerated with adults who prevented them from playing, having fresh air and moving freely. They sleep very poorly. At times the children looked very tired though they have not done any job. All is because of the very bad food served to them and the lack of activities. The children are always crying for reasons one could not explain.”³⁹⁴

Children are transported under very poor conditions when caught at the borders with their parents or from one prison to the next. A group of Cameroonians said the Libyan police always transfer detainees from one facility to the next without any information why the transfer is done and where they are being taken. In course of these transfer children are always in bad shape due to various reasons. Either the truck used to transfer them is very full that the air is very bad, there is no water to quench the high thirst or in a very

³⁹³ Interview with some Nigerian women from the Sebha detention facility, this interview was conducted on the 1st of April 2006 in Tripoli.

³⁹⁴ Interview with some Nigerian women from the Sebha detention facility, this interview was conducted on the 1st of April 2006 in Tripoli.

dirty truck which is really unhygienic for human beings particularly children. In the storey where a truck carried over a hundred persons from Sebha to Tripoli; some Cameroonians who were inside said;

Children in detention with adults often hear stories told by adults that always traumatised them. For instance those adults coming from war zones who were forced to be conscripted as soldiers narrate how they have to fight and kill others. These combatants usually narrate their war experience just as other adults. This so called passage of time in detention centres usually destroys children. Children are not given the possibility to go to school, or to other places where there are other children or youths. Unaccompanied minors are not given guardians who can take care of the needs of the minor. The government concentrate most of the time to see how such minors could be deported.

3.3. Treatment of Asylum Seekers and Migrants

Forced labour for very long hours without food is common in Libya's detention camps. When a detainee has a trade like painting, building, carpentry, plumbing, the police officers usually take them to do public work and at times private jobs for a particular officer without payment. Many of the detainees have raised this complain. They said:

"It is very common when we the detainees are about to be released from detention. Or in a case that the leader (the Guide of the Revolution) has issued an amnesty, instead of the guards releasing us, we are either carried to go and repair cars, build houses, do some painting, farming, mechanic or any other hand work for very long hours without food and rest. This treatment is a copy of what we suffer during the detention period."³⁹⁵

The group of Ghanaians said that in Libya; "there is a general belief that Ghanaians are good builders and due to this as we were in the detention camp in El-Falah prison, one of the police bosses was constructing his house. One morning we heard a question, who are the Ghanaians here? We put up our hands and we were asked to come outside. He

³⁹⁵ Interviews conducted with detainees from different nationalities on the treatment they faced in detention camps. Though these interviews were conducted differently, I will put the nationalities because it was done on one day. The different nationalities are Ghanaians, Cameroonians, Nigians, Nigerians, Sudanese, and Chadians. This interview was conducted on the 20th of March 2006 in Tripoli.

told us we have to go and do some construction work³⁹⁶. They accepted because at the back of their minds after working for some days, they can escape as some people have already done. Fortunately, they were good builders but it was unfortunate that as they started the work until the end, there was no chance to escape.

The Cameroonians were taken to go and paint a house of a police boss. As they arrived the area, they concentrated and painted the house. There were some police officers behind them with guns. They turned and asked the officers why should they be supervised like that. They went on that they have already had so many chances to escape but they did not why could the officers not allow them do their work with less pressure? The officers gave in and were controlling from a distance. On the third day, some materials got finished. Some of the guards left them under the control of their colleagues who were concentrated playing cards. They used that opportunity and disappeared.

The Chadians recounted the story of how a colonel took them to his farm in a very far away region where they had to stay with other guards and work. The colonel left them there and went away. It was in a region where there was no house and no sign of life. One can only reach this area with a vehicle. The idea of an escape was far fetched. During their stay in this area, the guards made them to work for the whole day and could rest only for about thirty minutes a day and very little to eat. After about one week, they were already too slim and short of energy to do any job. As the colonel came and saw the situation and heard complains from the Chadians, he dismissed the guards and brought in other guards.

Beating in detention camps is a common method used by the police and the military officers to discipline the detainees in Sebha, Kufra, Misrata, El-Fatah, al-Jedad and other camps. At the borders when the Border Guards apprehend the undocumented migrants entering the country, they beat them for not having documents. The group of Chadians said:

³⁹⁶ Interview conducted with some Ghanaians. This interview was conducted on the 20th of March 2006 in Tripoli.

“The Libyan border guards are very brutal and inhuman. They beat us because we did not enter the country with documents. Some of us got wounded and some of us lost consciousness because of the rough manner exercised in beating us. In the detention camp it was the same. We were beaten every morning to force us leave the country. It is really hell on earth. We strongly believe that these beatings were encouraged by the racist discriminative sentiments burning in them.”³⁹⁷

Libya abuses migrants, A Moroccan group, AFVIC's says, these comments came up at a time when a European Union-African Union conference in Tripoli to strengthen cooperation to try to stop the influx of illegal migration from poor African countries to Europe.:

“CASABLANCA, Nov 22 (Reuters) - Libyan authorities are jailing immigrants arbitrarily, submitting them to torture and forced labour, a Moroccan migrant support group said on Wednesday. Migrant support group AFVIC said Libyan officials had been picking up migrants at the country's borders, stripping them of their belongings and throwing them into detention centres without a fair trial or the right to contact their families. After a crack down on illegal migration in Morocco, Moroccans are increasingly heading to Libya to try to reach a better life in Europe, via Italy. Libyan officials were not immediately available to comment on the accusations but Tripoli's government has dismissed similar criticism over the past two years, saying authorities here treated arrested migrants fairly. AFVIC's comments were timed to coincide with a European Union-African Union conference in Tripoli on Wednesday to strengthen cooperation to try to stop the flood of illegal migration from poor African countries to Europe... AFVIC said some migrants had reported widespread malnutrition in the prisons, with inmates forced to sleep on the floor and torture common. One witness spoke of a prisoner who had his toenails ripped off and cases of sexual abuse. "What Libya doing is against international human rights conventions that it has signed," said Nouredine Karam, a lawyer who spoke at the news conference.”³⁹⁸

³⁹⁷ Interview with some Chadians who were detained for over eight months in the detention facility in Sebha. This interview was conducted on the 20th of March 2006 in Tripoli.

³⁹⁸ This information was accessed from gulf news.com: Rights group accuses Libya of migrant torture, published 24.11.2006, <http://www.gulfnews.com/region/Libya/10084865.html> This website was accessed on the 20 November 2007.

Some Cameroonians who were locked up in Sebha described how the police beat them. They asked the police why they brought them in the detention camp, the police said because they entered the county without documents and because of that:

“The police officers can do what they want to do and nobody will ask for an account. If a detainee is seriously sick and the police carry the person away and on return, if the other detainees ask where the sick person was taken to, they are going to receive serious beatings. There is a particular police officer by name “Shibani” (we do not know if it is his nick name or real name). He usually beats us from mornings to evenings and when he is beating us, he invites the other officers to come and watch how he is beating sub-Sahara Africans. As they watch us being beaten, they usually laughed. We were wondering how a police could beat over one hundred people alone. When it was time to eat, we just had to eat without lifting up our heads. If any body dared, he or she was beaten seriously.”³⁹⁹

In the Felah deportation camp in Tripoli, when visitors, human rights groups and UNHCR want to pay a visit, the officials do not usually show all the rooms. The Nigerian former detainees recounted a story where a group of visitors visited the camp but the officials did not want the visitors to see some of the detainees in bad shape. As the rumours about the coming of some visitors circulated in the camp, those in bad shape started making noise to draw the attention of the visitors. The police officers heard the noise; some of them went and pleaded with the detainees not to make noise. But they continued with their noise to attract the visitors, because of the continuous noise, the police officers came up with a trick and asked for four representatives from the detainees. They took these four representatives to a different room without the knowledge of the others and got them well beaten. After the visitors have gone, the representatives were brought back in blood and twenty-five people were taken away from the room for two weeks. On their return, they said they were in an underground prison after receiving serious beatings from the police officers.

Many detainees from different facilities said it is prohibited to ask a service or a clarification when one is in the detention camp or in a deportation centre because that

³⁹⁹ Interview conducted with a group of Cameroonians who were in the truck that carried over one hundred people from Sebha to Tripoli. This interview was conducted on the 20th of March 2006 in Tripoli.

will earn the person some strokes. The group of Cameroonians who were interviewed said:

“As we were in the Tripoli facility in El-Fatah, everybody got bored and tired because no authority was making a statement on when and how they were to be deported. One day we asked to talk with the boss of the facility. As he came, we asked him what we were doing in the facility? He said they want to deport us. We asked him how long do we have to wait? You people are not informing us of anything but making us to suffer. As our voices increased, the boss of the facility asked the other officers to take us back into our rooms. That was done with serious beatings especially if some body resisted.”⁴⁰⁰

Control in Detention Camps

The daily life of the detainees is strictly controlled. Mornings, detainees are counted to be sure that nobody escaped in one way or the other. In Sebha, this is very strict.

J said, “Mornings we have to stand on lines like military officers for us to be counted. In case of any mistake at that moment, the detainee is seriously beating.”⁴⁰¹

The group of Cameroonians who were carried to El-Fatah in Tripoli made the very comment on the nature of control. They said, in the mornings they were lined out according to nationality and were counted.

There is also strict control when detainees are taken to do manual labour or to keep the courtyard clean. I visited two prisons at the moment some detainees were cleaning the yard with heavily armed policemen closely behind them. To speak with the detainees, at least a guard will be there to control what you people are talking. On the day I visited al-Jedad prison where Blaise was detained, a police officer had to listen to what was the term of the conversation. Blaise was a little bit worried. Since the conversation was in French and the police officer could not understand and could not ask a visitor who does not speak Arabic to speak in Arabic, Blaise had to say so many things, in which he said:

⁴⁰⁰ Interview conducted with a group of Cameroonians who were in the truck that carried over one hundred people from Sebha to Tripoli. This interview was conducted on the 20th of March 2006 in Tripoli.

⁴⁰¹ Interview with J. from Ghana, this was conducted on the 20th of March 2006 in Tripoli.

“We are under strict control in this place. One cannot communicate freely, eat freely or even go to toilet. Our whole life is controlled. The walls are very high and the police officers are almost everywhere to prevent any misbehaviour like an escape. We are locked behind this black iron doors to prevent an escape. Look at where the table of the police officers is found, at the main entrance where we are detained and they all carry a gun. That is strict control.”⁴⁰²

The control mechanisms of Libya start from when one wants to enter the country. I will like to describe the difficulties it takes to get a Libyan visa and the strict control system in the country. To obtain the visa, one has to get a travelling Agency based in Libya, (in Libya it is known as Travelling Companies). This company will ask for your personal data (names, date and place of birth, nationality, objective for visiting Libya etc.) It is only when the company is satisfied with your objective to visit Libya that it will send an invitation letter, which is already registered with the police in Libya and a copy kept at the airport.

Without an invitation letter from a travelling company, a Libyan embassy based in a particular country cannot issue an entry visa to the country.

The best means to obtain a visa is through tourism, business or contracts. And with that the company inviting you has to keep close watch on your activities and where ever you go until you leave the country. Before arriving, a programme has been made on how you have to visit touristy sites, museums, etc. This means that everyday at about 10.a.m, the company’s van will carry you with a guide.

According to my research in the functioning of the companies, each company has at least a police officer or an informant who is secretly controlling tourists as they are in the country. I made a special experience on the 20th of March. On this day, my guide carried me and we were travelling to meet some asylum seekers, suddenly I saw three cars originally parked out at the site of the hotel behind us. I immediately drew the attention of my guide who confirmed the fact. He immediately drove into a traffic area, and drove

⁴⁰² Interview with Blaise, one of the Cameroonians in al-Jedad prison in Tripoli. This visit was done by three of us under close police surveillance. In order to protect the person who made us to visit the prison I have decided not to write the date because from the date, it will facilitate the possibility for the authority to know the name of the person. To enter the prison and detention camps, one person usually writes the name at the main entrance. That is what we did. The person living in Libya accompanied us to these camps and wrote the name.

very fast to a different direction, which made it impossible for the three cars to follow us. In the evening as we came back, the police was already waiting for us at my hotel Calabattre. They confiscated the document of my guide. But as if it was a film, the police boss could identify my guide and his documents were immediately returned to him.

In the evening, I filed in a report a report to the manager of the hotel. The manager informed the police in that jurisdiction. At that very evening at about 10.p.m, one of the police bosses came up to me in civilian cloth and questioned me of what happened. I narrated the storey without knowing the person. He promised that such a thing would never happen again. The following morning he came to the hotel to see if I will raise any complain. What I realised is that the strategy was changed and not that the people were gone. What made me to think so is because where ever I was going, my guide always informed the police. I came to know that the guide was always giving out information to the police because a Cameroonian living in Libya informed me. It so happened that I was supposed to conduct some interviews with them, we carried one of the Cameroonians to my hotel. As we were on the way returning, the guide called the police and informed them of the number of persons in the car, the number of stops we had to make and that we were heading towards the hotel. The guide did not realise the fact that the Cameroonian could understand and speak Arabic. When the guide dropped us, the Cameroonian informed me of the conversation that was going on between my guide and the police station.

Another discussion I had with Mr. Ahmed Al Ansary, the director of Alkalaa For Travel and Tourism, he confirmed the fact that his travelling agency has police officers working with him. They all know this but they cannot do the contrary.

Add to the above information, I had a person from Morocco who was informing me of what was happening and how the security network functions. It was this very person who introduced the police boss to me. This police officer was coming to the hotel everyday between the hours of 10 a.m. and 12 noons to control all the passports at the hotel. As a hotel tenant, one has to leave his or her passport at the reception until the last day of leaving the country. The hotel will give you a piece of paper carrying your necessary information in case of any contact with the law enforcement officers. With this piece of paper, one can travel all over the country.

3.4. Communication in Detention Camps

When the Libyan Border Service or police at the borders arrests the prospective asylum seekers and migrants or in the country they are brought to any of the detention camps in the country. In the camps, there is no telephone for detainees to inform somebody, a lawyer or a family member of their detention. Three Nigerians A, C and T said;

“As we were arrested at Kara, they kept us for over a year in a detention camp where we could not call anybody; we asked for a service to contact a lawyer, the Border Services got us well beating as if we have committed a crime. We asked them why should they beat us in such an inhuman manner? They said because we entered Libya irregularly without any document. We were told there was no telephone for us.”⁴⁰³

There is no organisation that could facilitate the detainees to communicate with their family members or other friends. These Nigerians said nobody was informed for the time they were detained and they met other detainees who told them they have not informed anybody because the means is not there and the officers do not want to manifest any good will for them to reach their friends or relatives.

In Sebha, in the Southern region of Libya, the situation is the same. First of all the issue of communication is not in question. No matter how long you live there. JJ a Sudanese said:

“I almost got mad because I could not reach anybody. One of the most worrying things is to be detained and you cannot communicate with anybody. It is just like carrying a heavy load that you cannot off load. I think the police are not aware of what is communication because if they do, they cannot prevent detainees from reaching some one they know.”⁴⁰⁴

In the detention camp in Kara, one of the detainees is kinder, after spending one year at a military base at the outskirts of Kara with approximately 170 people and among them with about seventy women said;

⁴⁰³ Interview with three Nigerians caught in Kufra, conducted on the 8th of April 2006.

⁴⁰⁴ Interview with a Sudanese who ran away from the war and was detained in Sebha for over six months.

This interview was on the 7th of April 2006 in Tripoli.

“For a whole year, I couldn’t call or write anyone ...they told us only that they were trying to get in touch with our countries to repatriate us.”⁴⁰⁵

In most of the facilities visits are limited. The UNHCR Libya said, “They have access only to the detention centre in al-Felah and have never been to the other facilities out of Tripoli.” Some detainees from Ghana who said confirmed this,

“ Since we were detained for about eight months in Sebha, nobody visited any of us and we never heard of any official visit. This really made us felt isolated since nobody knew of our whereabouts. The other detention facilities should be opened to international organisations and family members.”⁴⁰⁶

The detainees could not even communicate with the UNHCR since they did not know if it exists for those who have knowledge of its existence and who asked to contact the UNHCR, they said they were seriously beaten when they asked the police officers to let them come in contact with the UNHCR. As one of the detainees puts it;

“At times it is better not to let the police know you have knowledge of such offices because they become scared and can eliminate you for fear of the fact that you can report the manner in which Libyan police officers brutalise detainees. To play the fool at times pays than to show how intelligent one is. Intelligence does not work in Libyan detention camps.”⁴⁰⁷

Access to Translator

Libya is a country in which Arabic is the national language. There are so many prospective asylum seekers and migrants who confirmed the fact that everything is done in Arabic without taking into consideration the languages of the detainees. According to an interview with a group of Cameroonians, it was said:

⁴⁰⁵ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 42.

⁴⁰⁶ Interview with three Ghanaians, Koku, Kweku and Sunday, after about two years moving from one prison to another. This interview was conducted on the 7th of April 2006 in Tripoli.

⁴⁰⁷ Interview with three Nigerians caught in Kufra, conducted on the 8th of April 2006.

“Everything is done in Arabic. There is no translator from either Arabic into French or English. How can a detainee be heard when there is no provision to understand one another. In courts, in detention facilities or in cells and during our arrest either at the borders or at the random arrest in the cities, everything is Arabic. At times we asked ourselves what is running in the heads of the Libyans, how do they reason and how can they communicate with or judge people who do not understand their language in courts?⁴⁰⁸

The group of Cameroonians said that at the police station, when orders are given and one does not understand, the police officers are going to beat them. The police in most of the cases expect the detainees to understand Arabic. If somebody speaks Arabic, at times the police officers do not maltreat the person as those who do not understand a word in the language. The police officers always wonder why the migrants they mostly apprehend do not speak Arabic.

Access to Counsel

The prospective asylum seekers and migrants are not provided with lawyers if they are detained. If a person is arrested and he or she does not have money to pay for a lawyer, the person has to go to court without a lawyer. Since there are very few NGOs and with very limited powers and since the UNHCR is not recognised by the Libyan government, it is difficult to follow up the cases of the prospective asylum seekers all over the country.

In one of my visits to the detention centres I had to pay money for lawyers to take over the case of two detainees. One of the detainees B, from Cameroon was arrested by the police during an urban search and was taken to al-jaded police station where they spent about four months. I visited the prison and talked with B and D who said:

“We have not committed any crime. We were in our home and the police stormed the building, carrying on search and arresting those who do not have regular papers. That is

⁴⁰⁸ Interview conducted with a group of Cameroonians who were in the truck that carried over one hundred people from Sebha to Tripoli. This interview was conducted on the 20th of March 2006 in Tripoli.

how we were arrested. Now we do not have money to pay a lawyer and if we do not look for a lawyer, we are going to spend a long time here.”⁴⁰⁹

These two guys were fortunate because there was somebody who could intervene in their issues financially from outside.

3.5. Medical Health Care

Most of the detainees suffer from pneumonia, which they get because of the very cold floor on which they sleep without any mantras, pillow or cover. There is a period in Libya known as winter in which places become very cold that one needs to be warmed. A Somalian, B, said many people were complaining seriously of inflammation of their lungs during the very cold season. He continued:

“Two other Somalians with whom I came in contact complained of inflammation of the lungs but the police did not take them serious until when they fell on the ground and became a little bit hard and everybody in the same detention cell started screaming that is when the police in Sebha came and carried them away but until today that I am speaking, since I came out I have not seen them and I cannot ask because I am afraid of being arrested, being beaten and detained again.”⁴¹⁰

Poor and inadequate nutrition has caused some of the detainees to develop chronic gastro diseases. E, from Cameroon was always taking tablets to calm down his gastritis that he developed as he was in the detention facility in Kufra. He said:

“Before I entered this country, I did not have gastro disease but during the time I was locked up in Kufra, since we were not given enough food and if they have to give us food, it was very poorly cooked that I at times pretended to be eating but did not eat anything. After about six months I started having the symptoms of gastric. After nine

⁴⁰⁹ An interview with some Cameroonians in al-Jedad prison in Tripoli. This visit was done by three of us under close police surveillance. In order to protect the person who made us to visit the prison I have decided not to write the date because from the date, it will facilitate the possibility for the authority to know the name of the person from the attendance book at the main entrance. The person who accompanied us is currently living in Libya.

⁴¹⁰ Interview with W. and F. who were detained in the Sebha detention facility, this interview was conducted on the 21st of March 2006 in Tripoli.

months in the detention facility in Kufra, I was transferred to the deportation camp in Tripoli. In Tripoli, I complained of acute stomach irritation and I was taken to a doctor who checked me and discovered I have gastro-enteritis. Since then, I have been living on gastritis drugs”⁴¹¹

Psychological problems are common with many of the former detainees I interviewed especially those from the war zones like Somalia, Sudan, Ethiopia, Eritrea and Chad who were looked up in the different facilities. In the different interviews, most of them talked of the wars in the various countries how the lives of many people were taken away and they managed to escape in search of security, their very difficult route in the desert and ended up in detention facilities. The Sudanese W, said;

“The war in Sudan took away the lives of my beloved relatives. We used to live in a community where all of us carried on daily activities together. I always imagine how me and my other brothers, sisters and cousins used to take care of our cattle, ate together and spent the evening together. Due the war that has taken away the lives of some of these relatives, I decided to flee. My journey was not an easy one since I have to spend about two weeks in the desert dodging police check points, little food to eat, little water to drink and finally to fall in the hands of the Libyan police officers who beat us like animals without sympathy, no human feelings. I at times feel like to commit suicide because I could no more bear it.”⁴¹²

With the psychological problems, they do not have services or psychologists to take care of them and NGOs to assist them get the services. On the contrary, the other asylum seekers colleagues always smile over their colleagues with psychic problems.

Many detainees complained that the police officers do not allow them to see a doctor when they are sick. The police officers will always play the sick down. It is only when the situation has become very critical before the police officers usually carry the patient away from the detention centre. Where they are taking them to, no one knows.

⁴¹¹ Interview with E. from Cameroon on his health situation, this interview was conducted on the 22nd of March 2006 in Tripoli.

⁴¹² Interview with a Sudanese who narrated his unsteady state of mind from the reason of his flight to his flight destination. This interview was conducted on the 21st of March 2006 in Tripoli.

J, from Cameroon said, “I was seriously beaten by the police officers in Kufra until I felt sick when I asked to see the doctor, no one paid attention to me. They realised I was very sick but refused to take me to a doctor. I have seen cases where they beat detainees and blood was really oozing out but the police officers dumped the detainee with blood in the cell with no medical care.”⁴¹³

Many of the detainees have contacted transmissible diseases in the detention facilities due to overcrowding and constant contacts with other detainees who are sick. There are transmissible diseases like tuberculosis and influenza that some of the detainees have which the police officers should have separated the patients from the healthy detainees. But they do not do. When the detainees are apprehended, they do not undergo any medical check-up so nobody is aware of what diseases the other has. Before the detainee is locked up there is no medical check-up to verify if the person is a HIV/AIDS patient or not. That is the reason why so many crises affect those with the disease but nobody is able to know. Even if they know a detainee is a HIV/AIDS patient, no treatment is available. What they try to do is to see that such a detainee does not enter the country. CD, from Nigeria was very critical about this and he said:

“Before coming to this country, I was very healthy. As we were detained with one detainee who had tuberculosis in Sebha, we informed the police officers as we realised the difficult manner the colleague was breathing and coughing. The caught was not normal and most of us could identify the common symptoms of TB. The police officers did not listen to us. It was only when the sick detainee started coughing blood that the officers removed him from the room. It was already too late because some of us already got the virus and especially me, some months later I realised from a medical check-up that I contacted tuberculosis. It has now improved but I went through pains and I spent a lot of money. Nobody assisted me to get the drugs.”⁴¹⁴

Pregnant women who were detained and were sleeping on the floor developed pains all over their bodies but the police did not care to take them to a doctor. In the detention

⁴¹³ Interview with J. from Cameroon, this interview was conducted on the 21st of March 2006 in Tripoli.

⁴¹⁴ Interview with C.D. from Nigeria, this interview was conducted on the 21st of March 2006 in Tripoli.

centres there was no health unit to attend to cases like pregnancy or any simple case. DD who was locked up in Misrata said:

“ As I was in Misrata, I was sleeping on the floor with my pregnancy. I developed lots of pains that I complained to the police but nobody took me serious. One police officer to whom I complained answered me that that is the price of wanting to go to Europe using a boat. I thanked my boy friend who rescued me by bribing some police officers⁴¹⁵.”

I met an AIDS patient for a couple of days and finally accompanied her to the Tripoli airport as she decided to go back to Cameroon, her country of origin after she realised that she could no more live in the Libyan society. During her detention, she suffered from the crises but no body took her to the hospital because they did not diagnose the fact that she was an AIDS patients. After her release from the detention camp, she was diagnosed to have AIDS. This was known in the society and many treated her as an outcast, which made her feel very, disturbed and decided to leave the country.

4. The Socio- Economic Conditions of Migrants and Prospective Asylum Seekers out of Detention in Libya

I spent so many days with sub-Saharan Africans living in Libya and shared in their daily ways of living. It was discovered that there are many migrants, prospective asylum seekers and deportees living in Libya under different status. The externalisation and exclusion with the camp regime has created another sub-standard human beings in this country. Since in Libya the government does not accept the fact that there are asylum seekers, those released from detention camps and could not be deported due to lack of sufficient information or documents are dumped on the streets to struggle for themselves for survival. The creation of a “Buffer Zone” in Libya to act as international police to prevent asylum seekers and other migrants from making their way into Europe has contributed in developing a shantytown in the country. The standard in which these different classes of people are treated varies depending on whether a person is legally living in Libya with a red or green card and those without any of the cards. The living conditions in the field of accommodation, health, education, freedom of movement,

⁴¹⁵ Interview with D.D. who was locked up in Misrata for one month, this interview was conducted in Misrata, Libya, at their home on the 2nd of April 2006.

judicial system, employment, racism, state security in the society and religion tolerance will be treated in this section.

4.1. Accommodation

Migrants who entered Libya like Europeans carrying giant oil projects, water projects and Asians working in the hospital and other Arabs from Arab countries found in the teaching field, working in oil companies in the desert or managing other businesses, diplomats and sub-Saharan Africans carrying on the functions of informants to the Libyan government are well based and have protected accommodation that respect family privacy and receive basic services in the society.

The irregular sub-Saharan Africans are overcrowded in small rooms all over the country. In a small room of about 40 square metres, about 16 people are sharing in order to meet up with the high rents usually charged by landlords. The Libyans have a specific manner of construction, a parlour with about three small rooms. If there are ten to sixteen people sharing an apartment, they all share the lone toilet. At one corner, there is a cooker. The landlords usually collect rents at the beginning of each month. The apartments in which the migrants, prospective asylum seekers live are usually at the poorest quarters since they cannot afford the rents of apartments in rich quarters. In most of the cases the landlords usually control the tenants to see into it that they do not bring other tenants without their knowledge. There is usually not enough space for these migrants to sit very freely in their apartments during the day. If one of them is receiving a visitor, the visitor automatically becomes a visitor for the others because the others do not have a different room in which to retreat. At the very first meetings, most of them always felt very uncomfortable to take me into their apartments but I usually encouraged them with the some nice words like:

“The lives of migrants are almost the same everywhere. Almost all of us live a sub-standard and precarious life style with our rights and dignity thrown to the dogs. In most European countries, most of us crowd our apartments as well. It does not matter if one is legal or not but what comes first is how to manage our costs with the meagre amounts

we have. When I was in America the previous year, I saw the same situation. So overcrowding is not only common in Libya.”⁴¹⁶

With these words, most of them felt comfortable with the general plight of migrants all over the world and took me into their apartments.

In these apartments, no matter how many people do live there, they have a toilet at one Corner and a tap. The toilets usually smell in the apartment since the different tenants are almost constantly using it. The toilets are almost closer to the parlour, which means that if somebody is inside, the others in the parlour will always inhale the stinking smell coming from the toilet, and are hearing what the person in the toilet is doing. Male and female share these apartments in most of the cases I visited. A lady from Nigeria with a beautiful smile on the face said:

“We are obliged to live like this. There is no other choice. Either you do it like others or you find your self on the streets. There are others living on the streets or moving from apartments to apartment from day to day because they cannot make up the sum to pay for their rents. The issue of men or women is not important.”⁴¹⁷

4.2. Access to Food

The exclusion of the migrants and prospective asylum seekers is seen from their nutrition. Their food is of poor quality and they usually eat almost the very variety daily. Mostly, they eat starchy food. There is “Banku.”⁴¹⁸ A Cameroonian S.Z who has lived in Libya for over two years said:

“We do not have enough variety of food. And even if it exists, we do not have the money to buy. We are mostly forced to eat banku. Banku has made me to develop grey hair at my very young age. We are all malnourished. Either one eats banku or rice in the African restaurants in Madina, all these are starchy foodstuffs, Banku blocks ones head from

⁴¹⁶ I encouraged migrants and asylum seekers in Libya to feel very free and bring me into their apartments. This was done on almost daily bases as I wanted to visit somebody.

⁴¹⁷ Interview with a lady from Nigeria, this interview was conducted on the 24th of March 2006 in Tripoli.

⁴¹⁸ Banku is prepared from flower used to bake cakes and bread.

thinking because of that I am contemplating of stop eating it. But the great question is, if I stop eating banku, what will I eat next?"⁴¹⁹

Many of the migrants and prospective asylum seekers look very cranky and as they confirmed, they have lost a lot of weight because they eat very poorly. Some said there are days that they go without food to eat. At times they go to places where old bread is found and carried. At times some very old people carry rice and bread and distribute to some vulnerable cases as a sacrifice or gift called "Sardica"⁴²⁰.

4.3. Medical Health Care

The migrants and prospective asylum seekers in Libya say they have to pay to see a doctor and for treatment in case somebody is sick. To make a medical check-up with a doctor cost a lot of money. This has made many people to fall sick and die. The rate of deaths within sub-Saharan African communities is increasing at a very fast rate. Many Africans complained of not receiving medical care if they do not pay money. BS from Cameroon says:

"If there is any national programme to combat certain diseases then it is a paper tiger. In reality we are obliged to pay for all medical services and drugs, hospitalisation and in case of more drugs we have to buy them our selves in order to become really well. These drugs are very expensive and worse of all most of us cannot afford because a great majority do not work."⁴²¹

When somebody has HIV/AIDS the government always try to eliminate the person in one way or another. The rate of HIV/AIDS has increased in Libya. This is a call for concern in the country. It is found in the different groups of people living in Libya but most Libyans put the blame on sub-Saharan Africans. In a telephone interview, BS said that:

⁴¹⁹ Interview with S.Z. from Cameroon, this interview was conducted on the 23rd of March 2006 in Tripoli.

⁴²⁰ Sardica is practised in the muslim tradition where those who have usually make gifts to those who do not have.

⁴²¹ Interview with B.S. from Cameroon, this interview was conducted on the 23rd of March 2006 in Tripoli.

“A Nigerian lady was diagnosed of HIV/AIDS as she went to the hospital for medical check-up, she was given a mixture that she did not know the content. Some days later, she died after informing the others of the mixture given to her in the hospital”.⁴²²

At the time of this interview the corpse was still in the mortuary. This story has instilled a lot of fears in the community of sub-Saharan Africans.

The treatment they receive from the nurses in the hospitals is usually substandard. If somebody has a wound to be stitched, the nurses do it as if they are stitching a dead animal. K once had a wound on his head that he incurred from beatings from the police, he rushed to the hospital as blood was oozing out, he met an Asian nurse since in the hospitals many Philippines do work, The nurses who stitched the head;

“Did not take time and patience, they will pull my head from one angle to the next as they pulled the string they were using. They treated me as a dead animal. At that point, I did not have any choice. Though in pains, I was just praying that they should tell me it was finished. The Philippians maltreat black patients in a rough manner. The nurses and doctors working in hospitals are Asians, Libyans and it may be some Europeans. They do not respect us as human beings. They treat us in very inhuman manner. If one is sick, the sickness multiplies when he or she thinks on how to confront those doctors and nurses as sub-Saharan African. Since they usually treat is poorly, we are full of fears to go for treatment.”⁴²³

4.4. Freedom of Movement

There are certain places in the country that the black migrants and prospective asylum seekers living in Libya avoid to go. As I was in Tripoli, I invited some sub-Saharan Africans living there to accompany me in the city centres, many of them refused because they are afraid of arrest.

⁴²² A telephone interview with B.S., this interview was conducted on the 13th October 2006 from Germany.

⁴²³ An interview conducted with K. in Libya, this interview was conducted on the 23rd of March 2006 in Tripoli.

Around the “Tripoli museum to Hotel Cabier (Big Hotel)”⁴²⁴ to the city centre where the Mosque is found. In case there is a black from sub of the Sahara around the area, he or she is moving at a very fast rate or at the park to catch up a transport car. Certain places are allocated for blacks by the government like Medina, Boslin and the other poor settlements where blacks mostly live.⁴²⁵ EM said;

“It is difficult to see a black man in certain places in the city centre because of continuous arrests. The government has created two markets for us Blacks and in these markets, it is difficult to meet a Libyan. Here there is hardly a control except when there is a problem. We are obliged to circulate around this market. Some sort of inclusion and exclusion.”⁴²⁶ Out of these places, if the police see a sub-Saharan African he or she stands a high risk to be arrested or beaten. EM said;

“Many sub-Saharan Africans in the deportation prisons were caught as they were at the down town. We hardly go there because we are sure of control followed by police brutality or arrest. Since you came here, except of you, have you seen another sub-Saharan African moving in the city centre as you do. They only respect you because of your guide. When they see you with a white Libyan, they immediately identify the fact that you are a tourist or some body of a different status.”⁴²⁷

Two days before I quit Libya, I invited three friends who assisted me during my time in Tripoli at one of the beaches, I pleaded with my guide to carry us to a beach. About fifteen minutes drive, some custom officers arrogantly stopped our car and had to question the guide why he was with so many sub-Saharan Africans. The guide explained that we are going to a beach. The custom officer instructed the guide to take us to a

⁴²⁴ These two main places are found at the heart of the city of Tripoli. Usually, tourists visit the Tripoli Museum and the hotel Cabier, which is translated in English as (Big Hotel) is where all the important guests in Libya mostly stay. These places are heavily controlled.

⁴²⁵ Medina is an area allocated for sub-Saharan Africans to carry on market activities. This is almost a free zone for sub-Saharan African. It is known by all as African Market.

⁴²⁶ E.M. is living in Tripoli and coming from Cameroon. This interview was conducted on the 21st of March 2006 in Tripoli.

⁴²⁷ E.M. is living in Tripoli and coming from Cameroon. This interview was conducted on the 21st of March 2006 in Tripoli.

particular beach where there is a marine base. As my guide came back, I asked him what the custom officers wanted. He said:

“They thought I am a smuggler carrying you people to a place by the sea where at night you will be transported by the wooden boat to Europe. It is always difficult to see a Libyan with black Africans in the car because of this. And that is why I always hesitate to carry the people you ask me. I do not hate anybody but the security is so tight that it may be when you are gone they will still be suspecting me. The custom officers asked me to carry you people to a particular beach.”⁴²⁸

Once accepted as one of the above-mentioned migrants in Libya, it warrants a free movement in the country without detention or fear of detention. With a green card, an individual can move all over the country because the document is used as evidence that the person is legal in the country. It has a special status and this is recognised by all administrative bodies of the public and private sectors. KG said;

“I can move to any part of this country without fear since I have this card. I can enter all the shops, hotels; go to every part of Tripoli and out side to other sections if I carry this card with me. Without this, one will be harassed by the police and other law enforcement officials.”⁴²⁹

The Arabs move very freely in Libya, cross international borders of Libya without any visa without any fear of being caught by the police. They do not need entry or exit visa. This is not the case of sub-Saharan Africans entering through “Kufra”⁴³⁰, Chad, Niger or the desert in general. As sub-Saharan Africans enter with irregular status they always look for smugglers to transfer them from one state or city to another. In most cases, they avoid using public transports because of fear of police control at checkpoints but they pay smugglers who know how to dodge the various police checkpoints.

⁴²⁸ A conversation between my guide and myself after a control from custom officers. This was on the 7th of April 2006 in Tripoli.

⁴²⁹ Interview conducted with K.G. from the Democratic Republic of Congo, this interview was conducted on the 7th of April 2006 in Tripoli.

⁴³⁰ Kufra is one of the Border city in the southern region of Libya where it has been realised that asylum seekers, refugees and other migrants usually use to enter Libya.

“WZ said, as we entered Libya and were around Kufra, we were told by other sub-Saharan Africans living in Kufra not to continue the journey because of the high police control which can lead to our deportation. This made us to negotiate with private individuals who know our contact persons who have lived in Kufra for a long time. With this confidence we paid almost three times the price for him to carry us to Tripoli.”⁴³¹

Arrests in City Centres

With the presence of undocumented migrants and prospective asylum seekers and asylum seekers, the Libyan government started a campaign that led to random arrests and deportation from the different cities. At times the undocumented people are deported to countries, which are not their countries of origin. KM said;

“Many migrants and asylum seekers were deported in the desert to a place known as the “NO MAN’S land” closer to Niger around Gathrone. This continued for a long time until the Niger government had to warn the Libyan government and asked her to stop the inhuman act of deporting individuals in the desert. The Libyan government deportation was really bad because she did not take into consideration the countries from which the individuals originated. It was some sort of random deportation.”⁴³²

Many sub-Saharan Africans always avoid going to certain places. DG in Tripoli narrated how the police around the city centre stopped him and his friend when they went to buy certain goods, which could not be found where they live. As they were struggling to cross the road, two men in plain cloths approached them, presented them selves as police officers and asked them for their passports. They did not have any document and they were apprehended and carried in al-fellah prison where they passed six months before they were released.

Some migrants said when they are in the city, they are very careful not to offend anybody. Some of the Libyans always provoke them as they pass by and if they respond that can lead to an incident that will invite the police. If the police officers come, they do not ask what happened or who started the problem but the sub-Saharan Africans are immediately arrested for having a problem with a Libyan. This is the situation with BB

⁴³¹ Interview with W.Z. from Chad, this interview was conducted on the 24th of March 2006 in Tripoli.

⁴³² Interview with W.Z. from Chad, this interview was conducted on the 24th of March 2006 in Tripoli.

from Cameroon who had a problem with a taxi driver. He took a taxi driver, they agreed on a price. At the time of payment, the taxi driver realised that BB has a lot of money in his pocket; he added the price from the original price. As BB tried to argue, the driver held him and started beating him. As in most cases, the other Libyans joined the taxi driver and they got BB well beaten. In course of that the police arrived and BB was carried to prison where he spent over six months.

It is difficult to see migrants, asylum seekers or prospective asylum seekers at the sea site for see breeze because many of them ended up in deportation prisons if they are caught. The migrants say that many arrests take place at the seaside because the police mistakenly assume any sub-Saharan African at the seaside is waiting for Lampa-lampa to sail to Italy or Malta. Some of the interviewees said. They were arrested at the seaside when they went to swim, as places were very hot. Since they could not speak the language, the police carried them to al-Fellah for deportation. They tried to explain themselves but there was nobody to listen to them. Usually the police officers do not inform the detainees of the reasons why they are arrested.

In a discussion with the UNHCR Libya, it was revealed that there used to be mass arrests of undocumented migrants, refugees and prospective asylum seekers by the police in the city and in their apartments. At one of these arrests, some individuals already recognised by the UNHCR as eligible refugees were arrested. This very incident could be seen in the report of Human Rights Watch, which says:

“According to the UNHCR, the Libyan police arrested thirty-one refugees and asylum seekers with attestation letters from UNHCR during police sweeps that began around September 2004. The authorities detained all of these people in Tripoli’s al-Fellah deportation facility, with the exception of one Somali refugee whom they detained at the immigration department. The authorities eventually released these people after UNHCR mobilised the support of ambassadors from African Union states.⁴³³

At the time of the interview, UNHCR confirmed that for quite a long while, such mass arrest do not still take place. But the migrants and asylum seekers always complain of arrests and molestation from the police.

⁴³³ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 35.

4.5. Forms of Discrimination

Libya is discriminating and suppressing other minority groups found in the country in order to create a pure Arab state. This is the case with the Berbers. Talking with many Berbers, they said:

“We are like the Indian Americans. We were the first people to be here before the coming of the Arabs but today the Arabs want to extinct us and to consider Libya as a pure Arab state.” Showing me a sign, they said, “This is our symbol. It signifies one people, one culture and one nation.” They warned me as I made pictures of the symbol; “please, don’t let anybody see that sign in your camera. It can really put you in big problems and if you are identified with us while carrying this sign, we stand the risk of losing our lives.”⁴³⁴

The Berbers criticised the fact that so many social activities to relief stress is not found in the country, which they would have liked to have. A discotheque would have been nice but unfortunately it is forbidden in Libya and if anybody dares clamour for it, he or she will be eliminated or sent to a long term of imprisonment. Worst of all somebody from his or her region. They said:

“We are all dominated not to raise our voices. The government is aware of our standpoint against the dictatorial and dominance. We do go to disco but not in Libya. When we travel to Algeria or Tunisia, we go to disco. It releases stress and dogmatism. We also drink alcohol but it is forbidden by the Muslim tradition. So in Libya, we do not dare but when we travel out of the country, it is like birds in a forest. We become very free to do what we want. What is usually prohibited in our culture, as the Berber is a cigarette? Though we do smoke as well, we do it hidden. It is like a taboo in our culture and a disgrace to our family if other people know we smoke.”⁴³⁵

⁴³⁴ Discussion with some people from the Berber region who today formed the minority of the country. Their ladies do not usually wear viel but because of the political and social climates many are in viel to avoid attacks. The Berber are seen as one of the strong opposing ethnic groups to the Libyan and Arab government. This discussion took place on the 14th of March 2006 in Tripoli.

⁴³⁵ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 60.

The Libyan government always refuses the fact that there are people with different origins in the country and that there is racism or xenophobia in the country. In a memo of April 2006 sent to Human Rights Watch, The Libyan government wrote:

“The Libyan Jamahiriya was and remains prominent in its role in fighting discrimination as witnessed by the entire world, and clarifies that the problems occur between foreigners themselves and are not born of any discriminatory practices.”⁴³⁶

Libya Jamahiriya’s report to the Committee on the Elimination of Racial Discrimination was very clear that: “It is possible to state categorically that there is no racial discrimination of any kind in Libya,” The reason advanced by the government is that Libya has no “religious or ethnic communities that are defined by their religion, race, language, gender, colour or political affiliation.” The fact that all Libyan citizens share common origin, religion and language “has undoubtedly been a determining factor in the absence of racial discrimination in the country.”⁴³⁷

Xenophobia and Racism in Libya

Many migrants and asylum seekers living in Libya narrated different experiences of racist and xenophobic treatments from different quarters in the country. I also lived some of the experiences during my one-month stay in the country. There is a strong feeling of religious intolerance, which has created discrimination and hatred against sub-Saharan Africans. In some public institutions, the racism is very opened.

In a telephone interview with EM after my visit to Libya, EM informed me that the Ama bank of Libya has instituted a racist and apartheid system in which sub-Saharan Africans have a particular line from Libyans for services in the bank. EM living in Libya for over four years said the Libyans have been complaining that they cannot come to a bank and tolerate the fact that black people should be served before them. From the interview with EM, he said:

“There are different towers in the bank. Tower five is for the blacks. When I say blacks, I do not only mean black Africans from the Sahara. My definition of blacks includes

⁴³⁶ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 252.

⁴³⁷ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 252.

Pakistanis, Bangladeshi and Indians. Meanwhile tower three is for those with white colour, Libyans and other Asians like Philippines and Europeans.”⁴³⁸

Other racist context could be identified when police officers intercept sub-Saharan Africans on the streets. In most cases when a black person is passing the police will call and ask for passport. If the individual does not produce it, as it is usually the case with many of them, they will be arrested. In course of the way, the police will ask if the individual does not have money to pay his or her way from landing into prison or deportation camps. PP said;

“If a person brings out about 100 Libyan dinar (LYD), the police will set the person free but any amount less than that can end one up in a deportation prison. After collecting money from us, they will try to flatter us that they are not wicked. They usually say we are all Africans. They do not see that they are racist and corrupt.”⁴³⁹

Racism is manifested in most of the shops and other business centres. KL and other Nigerians noticed that whenever they go for shopping, the shopkeepers always try to inflate prices of goods. They always take blacks as idiots. When they realise a black man understands the language they start to seek for an excuse that prices of goods went up the previous night and at the same time will try to make an offer to reduce the amount of money from the total amount.

This attitude to inflate prices is usually common with drivers of Libyan’s black and white taxis. During my stay in the country, when I did not want to move with my guide in order to prevent him from the fact that I was conducting interviews with sub-Saharan Africans, I usually took taxis. When the taxis drivers see a black African, the prices are usually high. In cases where they realise one does not speak the language, the prices taxed are very high. In order to escape these high prices, I usually asked the hotel waiter in the hotel I lived during my stay in Libya to stop taxis for me. With this strategy, I usually paid very low prices when going but very high prices when returning.

⁴³⁸ Telephone interview with E.M., this interview was conducted on the 7th of November 2006 from Berlin, Germany.

⁴³⁹ Interview with P.P. from Cameroon in Tripoli, Libya, this interview was conducted on the 21st of March 2006.

In restaurants most of the times, Libyans are first served before sub-Saharan Africans. This author experienced this several times. I went to restaurants and sat for about thirty minutes before somebody will come up to me. They usually concentrate on other Libyans. Due to that whenever I wanted to go to a restaurant, I went with my guide. This facilitated quick service.

As I was sharing my experiences with some blacks in Libya, many of them told me their experiences as well. PP recounted a story where he went to a Libyan hamburger restaurant, stood on the line, very hungry but none of the sellers looked at him for about forty-five minutes. It is only when he staged a protest of going away that one of them came up to him and asked him what he wanted. He passed his command and was served.

Racism could be identified at jobs. Those who could manage to have some of the low paid jobs complained that their salaries are always smaller than those of Libyans though in reality most Libyans do not work as they do. "During working hours, we work without rest because there is somebody supervising us but the Libyans are not usually controlled but at the end of the month, we receive meagre salaries to the Libyans. WR works in a flower factory in the desert where they produce and package flower, he has to get up very early in the morning to start his job. Per day, he can package about five to six hundred packets of one kilogram each. A thing a Libyan cannot do. The Libyans package at most two to three hundred packets a day but at the end of the month, the Libyan's salary is greater than ours."⁴⁴⁰

Another form of racism at job sites can be seen in long working hours sub-Saharan Africans are subjected to. In most of the cases, individuals are obliged to work ten to twelve hours a day, meanwhile a Libyan does just eight hours. DD from Sudan complained that a Libyan does not do such a thing if there is no extra payment. But with them from sub-Sahara Africa, there is no question of extra payment. He concluded:

"This continuous tedious work wears one out and the person productivity capacity reduces with time. This is like a slave labour since one does not have the choice to say

⁴⁴⁰ Interview with P.P. from Cameroon in Tripoli, Libya, this interview was conducted on the 21st of March 2006.

no. If one says no, that is the end of the job. And since everyone is struggling to have something to do, this slavery is instituted.”⁴⁴¹

Another form of racism very common is on the street. It is manifested when Libyans see black Africans from sub of the Sahara; they either start by asking for cigarettes or money. At times they start by greetings and if the black responds, the next word is an insult and later followed by some beatings. This situation has been faced by many of the people I met. AN a prospective asylum seeker from Ethiopia said;

”As I was walking on the street, I met some young men standing by the side of the road I was walking, I immediately crossed over to the other side of the road and they did the same. At first they greeted me with words like “how are you” I answered, “I am fine, thank you,” they asked me if I had cigarettes, I said I do not smoke. They asked me if I had money to give them, I said I do not work. They started calling me slaves and throwing gravels on me. I tried to increase my pace to run away but they were faster than me. Suddenly, I heard a hard knock on my head. It was a stone and blood started coming out. As they saw the blood, they all vamoosed.”⁴⁴²

It is difficult as a sub-Saharan African to move with a woman on the street even if it is your legally married wife. Since most women of sub-Sahara- Africa origin living in Libya now put on veils or head scarf to prevent attacks, the Libyans usually attack black men moving on the streets with a woman, they attack with stones and other instruments. This due to various reasons, the first reason is that they think the black men are moving with the Libyan ladies which they are not allowed to do and the other point is that a black man does not have the right to move with a lady. This has made most of the couples to move separately. TT said;

“When we have to go to church or other public places, we do not usually move together with our wives. Either our wives go ahead or we come behind or vice versa. It has always happened that we face attacks when we are seen together with a lady. We do not understand these people. They do not want to see any black man with a lady. Most

⁴⁴¹ Interview with D.D. from Sudan, this interview was conducted on the 24th of March 2006 in Tripoli.

⁴⁴² An interview with A.N. from Ethiopia, this interview was conducted on the 24th of March 2006 in Tripoli

of them think we do not have the right to have marital or any other type of relationship with a woman because we are blacks.”⁴⁴³

There was an incident that happened with a sub-Saharan African and a group of Libyans with a Libyan lady. The Libyan lady who is in the military, above the age of twenty-five, unmarried decided to have a relationship with a sub-Saharan African. In Libya, in most of the cases, as it is said, “If a woman is above twenty-five years, it is difficult to marry to a Libyan. She is considered as “above age” and is seen as some sort of an outcast (Tahban= which means above age). This lady was moving with this guy and told him not to be afraid. That nothing could happen to him. At the moment that this guy developed some courage to continue with the lady, some guys attacked him. This was in Benghazi. Due to the attack, the guy had to leave Benghazi and transferred to Tripoli. The guy knew he would not always be together with the lady and that these Libyans have already spotted him out. Though this lady came after him in Tripoli, he never went back.”⁴⁴⁴

The next strong aspect of the society that I noticed was the fact that Libyans do not consider themselves as Africans. They always use Africa when describing a black man from sub Sahara as an abuse. In most of the taxis I entered. The drivers always asked me; “why is it that you Africans like using the Mediterranean Sea to go to Europe.” One other driver told me, “I had to rescue an African woman with a young child who were almost drowning as she tried to cross the sea to Europe.

In other cases, the use of the word “nigger” is very common with many Libyans in describing a sub-Saharan African. I experienced this myself in so many instances as I went into the different quarters to conduct my interviews. The Libyans who are not courageous usually stand at the windows and shout “nigger” “nigger” as one is passing. In course of doing that they hide their faces behind the windows. This happened to me several times in Gurgee. There are other cases, where those who are very courageous stood directly in front of me and addressed my friends and me “nigger” “nigger” as we passed by.

⁴⁴³ An interview with T.T. from Cameroon. T.T. is a married man who has never moved together with his wife, this interview was conducted on the 23rd of March 2006 in Tripoli.

⁴⁴⁴ This story was narrated by a Nigerian who claimed to be the friend of the guy who was attacked. The story was narrated on the 24th of March 2006 in Tripoli.

The trend of racist and xenophobic attitudes against sub-Saharan Africans has existed for quite a long while in different forms and this can be seen in different incidents narrated by the victims. These incidents are the trouble that rocked in al-Zawiyah and the other is media report on sub-Saharan Africans using fishing boats to go to EU. Before this period, BS, a Ghanaian who has been in Libya for about twenty years said;

“Formerly, Libyans had the right to enter the houses of a sub-Saharan Africans and carry any nice article like radio, musical instruments, good dresses that they found. On the streets, if a black is wearing a nice article, a Libyan asked the person to surrender it to him. There was no protection from the government. Though the racist sentiment has come to an open platform after the incident of al-Zawiyah, the attitude of confiscating the property of black Africans has reduced but we are still cheated in various forms.”⁴⁴⁵

According to the description of BS who was in Libya at the time of the incident of al-Zawiyah, the whole scene of al-Zawiyah was “horrible and terrible.” BS continued his narration that, the scene took place as some Libyans clashed with sub-Saharan Africans. In reality the scene was provoked because the Sub Saharan Africans had got more than enough from Libyan racism. They were always racially attacked but nobody nor institution of the state could make a statement. Due to this, some blacks from many countries decided to repost as certain Libyans attacked them and this led to the dead of a Libyan. Though the affair is branded “the Nigerian affair”, it is not true since there were citizens from other countries like Chad, Ghana and many others involved.

On the part of a top Libyan authority, the incident occurred because;

“Some fights broke out between Nigerians and Libyans after the Nigerians have teased some Libyan girls. The police intervened immediately and took the necessary measures and arrested those who were involved.” And “the Libyan government said in April 2006 that seven people had died in the incident, although it did not specify how many of the victims were Libyans and how many were foreigners.”⁴⁴⁶

⁴⁴⁵ Interview with a Ghanaian who has lived in Libya for quite a long while. This interview took place on the 20th of March 2006 in Tripoli.

⁴⁴⁶ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 63.

Many sources contradicted the number of dead and those wounded given by the Libyan government. The Sudanese and Saudi newspapers reported that the incident left fifty people dead and dozens wounded... In Khartoum, the daily Akhbar al-Yom reported, fifty people were killed and dozens hurt in clashes between Libyans on the one hand and nationals of the Chadian and Sudanese communities on the other in Zawiyia."⁴⁴⁷

In relation to this incident, Amnesty International writes that; "in May, two Libyans, a Ghanaian and four Nigerians were sentenced to death, one in absentia, by the Tripoli People's Court. They had been found guilty of "plotting against the policy of Libya and its leading role in Africa, undermining the aim of the Libyan Jamahiriya of creating a united African entity, and disturbing public order". The Nigerians and the Ghanaian were also convicted of "the murder of Libyan citizens and theft". The trial followed racist attacks which took place in September 2000 in which dozens of sub-Saharan Africans were killed..."⁴⁴⁸

Another racial motivated violence took place in 2003 at a market known as African market in Anza rah in Tripoli where predominantly Sudanese used to sell. The fight was between some Libyans and Sudanese. According to GB from Sudan: "the authority of the market kept on increasing prices for the sheds used to sell different types of articles. The price of a shed or shop that could cost 50 dinar (LYD) was tripled to 150 dinar (LYD). We tried to dialogue with the officer in charge of this market to understand that nobody could pay such a high amount because we do not sell so much. The authorities were always very arrogant that caused a strong fight where one Libyan died."⁴⁴⁹

Racism in sport is very strong in Libya. Through a telephone interview with KK, I was informed that in October 2006 the national team of the Republic of Congo played a qualifying match for the on coming African Cup of Nations in Libya. During the match, the population started throwing stones, plastic containers full of urine, excrement and other materials where the Congolese Consulate and other Africans were found in the field. Sensing the danger as stones and other articles were flying in the field, the Libyan

⁴⁴⁷ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 63.

⁴⁴⁸ Amnesty International: Amnesty International Report 2002 LIBYA. AI Index: POL 10/001/2002.

Online:<http://web.amnesty.org/report2002/mde/libya> , accessed on 30.10.2007.

And Human Rights Watch Volume 18, No. 5(E) September 2006, p. 64.

⁴⁴⁹ Interview with G.B. from Sudan, this interview was conducted on the 24th of March 2006 in Tripoli.

minister of sport hurriedly went away. The wife of the Congolese consul was a victim. They shot her face and she had to lose two of her teeth. She was badly wounded to the extent that she spent about three weeks in the hospital. KK said;

“I can never go to the field when a sub-Saharan African team is playing because the Libyans become very aggressive to all black Africans. Worst of all if one is a national from the country which team is playing. With the Libyans, either they win or at least make a draw. Anything apart from that is a rampage. They still do not want to believe that they can lose in football.”⁴⁵⁰

Despite the racism in the country, the Libyan officials hold that there is no racism. And that Libya welcome fellow Africans to come and work. “We have harmony between groups,” said Assistant Secretary of Foreign Liaison and International Cooperation Sa’id Eribi Hafiana. “We are an African state.”⁴⁵¹

Religion

In Libya, there are certain churches like the catholic; Anglican and a church for Philippians but most of the citizens still believe that everybody must be converted to a Muslim. From the narration of different migrants, asylum seekers and from my personal observation, I was pushed to research into this domain. When ever I came in contact with people for private conversation, on the street or in taxis, the first question is if I am a Muslim. Immediately I refused, the faces of the people changed.

On my arrival in Libya, it took me some time to understand that not all the women I saw in veil were Arabs and did originate from Libya. Almost all the sub-Saharan African women I met were obliged to wear a veil or headscarf to cover their heads. Though in some customs of Libya women must not wear a veil, experiences made by most women from sub-Sahara Africa forced them to put on veils or at least headscarf. Many of the women I talked to and made some pictures of said:

⁴⁵⁰ Telephone interview with K.K. from Congo. This interview took place on the 7th of November 2006 from Germany.

⁴⁵¹ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 60.

“Before we came to this country, we did not use to wear veils but our experiences in some quarters are very hard. When we are passing without a veil or headscarf, the Libyans address us as prostitutes and throw stones on us and at times splash water on our body. In these veils we are hardly identified as Christians but as Arabs. Though this has reduced the attacks against us, it has taken away our cultural identity and freedom.”⁴⁵²

To obtain a job in Libya as a sub-Saharan African greatly depends on if somebody is a Christian or a Muslim. Many sub-Saharan Africans have changed their faith and names to facilitate them obtain a job. According to them, it is very difficult for a Libyan to have trust on somebody who is not an Arab. In so many interviews and conversations some of the sub-Saharan Africans made fun and told me their real names. They said:

“We have to change our Christian names to Muslim names in order to minimise the critical situation of obtaining a job. Today most of us are Mohammed, Mustapha, Issa, Mahmoud and other Muslim names. Those who are very stubborn to do that find it difficult to have a job. Some of us have been working with some of our masters who strongly believe we are Muslims and at times they give the keys of their magazines. A thing they can never do to a Christians since they consider Christians as Satan (Shitans).”⁴⁵³

The changing of names means so many things to them because they have to observe the Muslim rites during hours of working days. As these guys confessed;

“If it was just an issue to change the name it would not be difficult. What is more difficult is the fact that we pray and fast with the other Muslims during working days. We are obliged to respect all the other Muslim religious rites. If not, one risks losing the job.”⁴⁵⁴

⁴⁵² Interview with women from sub-Sahara Africa, this interview was conducted on the 25th of March 2006 in Tripoli.

⁴⁵³ Interviews with Nigerians, Cameroonians, Sudanese who have changed their names to survive. This interview was conducted on the 21st of March 2006 in Tripoli.

⁴⁵⁴ Interviews with Nigerians, Cameroonians, Sudanese who have changed their names to survive. This interview was conducted on the 21st of March 2006 in Tripoli.

PP from Cameroon, who is today known as Mustapha narrated a story how his master on a particular day went into his bag and saw a document bearing his real Christian name and was very angry. He successfully convinced the master that the document did not belong to him and since there was no picture on it, the master was forced to accept. The master maintained him at work and observed him for quite a long time before reinstating the confidence he once had on him. As PP said, “many things made the master to maintain me, my hard work and respect of the Muslim rites. During this period, I kept away from other sub-Saharan Africans who were Christians in order that the master could believe me. I had to be exclaiming in Arab. I had to learn some of the Arab expressions and manner of reacting in special circumstances that I usually does especially when the master was around in order to wipe out any doubt the master had in his mind.”⁴⁵⁵

5. Deportation and Refoulement from Libya

Deportation from Libya is an issue executed by police officers and boarder guards. There is mass deportation on collective bases as well as deportation of individuals. These deportations are carried out on individuals trying to enter Libya, those caught at the sea sites of the Mediterranean Sea attempting to cross over to Europe and those already living in the country irregularly. There are cases where deportations are carried out in relation to nationalities.

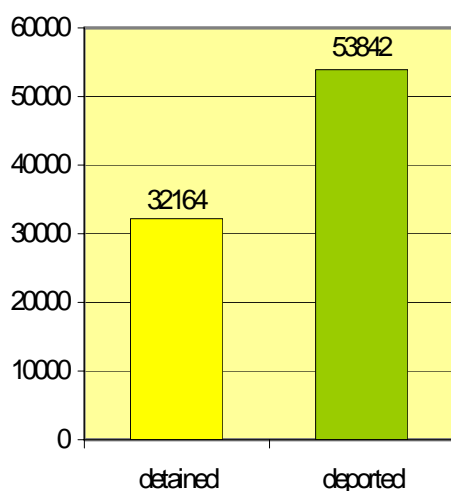
5.1. Deportation Procedure

There is no Asylum Status Determination Procedure in Libya. Deportees are immediately considered irregular migrants. This has made the Libyan government not to follow judicial procedure to deport individuals. When migrants, prospective asylum seekers and refugees are apprehended either at the borders to Libya, in the city during general arrests or attempting to cross to Europe, the government pre-occupation is to identify them. After the identification process, a traveller's certificate is established from the embassy of the country an individual originates which will finally lead to deportation. So many people who were deported but later returned to Libya confirmed this fact by saying that:

⁴⁵⁵ Interviews with P.P. from Cameroon who changed the name. This interview was conducted on the 21st of March 2006 in Tripoli.

“We were never taken to any courts before being deported. What happened is that the police officers brought us to deportation camps for some time. During this period other deportees are brought. No information is given to us why we were brought to the camps, where we are going next. What is absurd is that one morning the police officers will just announce that we have to go back to our different countries of origin. At this time the whole place is full with well armed police officers.”⁴⁵⁶

Fig. 13 Detention and deportation of illegal immigrants in Libya in 2006



Source: Report of Frontex-Led EU Illegal Immigration Technical Mission, 28 May- 5 June 2005, p.32.

For deportees from Italy, they are directly deported according to the Libyan government to their countries of origin because their documents were already processed in Italy. Hadi Khamis, the director of Libya deportation camps said;

“The quickest returns are of persons sent back from Italy because the Libyan and Italian governments have arranged their onward removal to countries of origin prior to their arrival in Libya. This is arranged before they come to Libya so we do not hold them. They are not held in al-Fellah but sent right home.”⁴⁵⁷ According to the table from FRONTEX

⁴⁵⁶ Interview with former deportees from sub-Saharan Africa, this interview was conducted on the 20th of March 2006 in Tripoli.

⁴⁵⁷ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 55.

above, about 53842 people were deported this year from Libya in 2006. Another report states states “over 50.000 were deported from Libya in 2006.”⁴⁵⁸

5.2. Mass Deportation

Libya deports many people without processing their cases. When individuals are caught in groups, they are treated as a group and are deported. This has happened several times at the different cities in Libya. Many sub-Saharan Africans from different countries confirmed this. A group of Chadians said:

“This is our second time to come back here. The very first time we did not understand the borders very well and as we entered the country, in Kufra we were moving in groups, which made it easier for the border guards and police officers to recognise the fact that we were new comers in the country. Though in Libya, to move in groups as foreigners or migrants is a method of protection against racist and xenophobic attacks from the Libyans, in this situation of new arrivals, it is not usually safe. We were apprehended by the Libyan police officers. They identified that we were from Chad. We said we were fleeing from the civil unrest in our country, still, they detained us in a centre for about ten days and carried us back with a sealed truck and dumped us at a certain distance in the desert closer to our country.”⁴⁵⁹

Citizens of Niger living in Libya also raised the situation of mass deportation. They said,

“Most of us here have been deported at least once in the desert. The Libyan police officers pack us in trucks and drop us in the desert, some kilometres away from the Niger borders. They hardly hand us over to our police officers. At a certain distance, they will tell us to trek back to our country. At times they deport us with other nationalities mostly Nigerians and Sudanese.”⁴⁶⁰

⁴⁵⁸ Johnson Dominic: Libyens Abschiebelager. Weg in die Unmenschlichkeit. In: taz, die tageszeitung, 13.11.2007, website: <http://www.taz.de/1/politik/afrika/artikel/1/weg-in-die-unmenschlichkeit/?src=SZ&cHash=0ed044ca91>, accessed on the 20.November 2007.

⁴⁵⁹ Interview with some Chadians who were arrested and detained in the detention facility in Kufra and later deported back to the desert. This interview was conducted on the 20th of March 2006 in Tripoli.

⁴⁶⁰ Interview with some citizens of Niger, this interview was conducted on the 20th of March 2006 in Tripoli.

5.3. Deportation due to Nationality

Though deportation affects all the migrants living in Libya, there are certain nationalities that are on the black book of Libya, countries like Eritrea, Ghana and Nigeria. In detention and deportation facilities in Libya, many citizens of these nationalities are awaiting deportation. Meanwhile those who are outside of these facilities are full of constant fears. Some Nigerians said;

“Since 2000, the deportation rate affecting Nigerians have increased tremendously. Nigerians are like the sacrificial lamb. When a Libyan police officer arrests those of us from Nigeria, we know there is no mercy. Many of our colleagues who disappeared called us from home to say they were deported. They always make mention of police brutality during deportation.”⁴⁶¹

Ghanaians living in Libya who highly hold the opinion that they are hated in Libya share this very fear. Talking with some Ghanaians, they said:

“ Ghanaians are hated by common Libyans and their government. They carry us in chattered planes of all types back to our country. The authority does not listen to any complain. Their sole objective is to bring us back to our country.”⁴⁶²

Libya and Eritrean Migrants

Eritreans as earlier said are found on the Libyan list of deportation. Most of them are deported en mass without the Libyan government taking into consideration their fear of persecution if returned. On the 21 July 2004, an incident of deportation from Libya to Eritrea occurred that drew the attention of human rights groups and other international organisations. The Libyan government with the use of duress deported 109 Eritreans using an Italian sponsored Air Libya Tibesti chartered flight. As these deportees arrived, the Eritrean government in a place where the outside world cannot communicate with them apprehended them.

⁴⁶¹ Interview with some citizens of Nigeria, this interview was conducted on the 24th of March 2006 in Tripoli.

⁴⁶² Interview with a group of Ghanians, this interview was conducted on the 20th of March 2006 in Tripoli.

About a month after the deportation of the 109 missing deportees, the Libyan government still deported 75 other Eritreans. The deportees knowing fully well that they were going to disappear as the others, decided to hijack the plane that carried them and forced the pilot to land in Khartoum, Sudan. In Sudan, sixty of these people went through the UNHCR Refugee Determination Status and they were recognised as eligible for the refugee status. In course of the interviews with the Eritrean deportees, the UNHCR recognised that these deportees were detained without claims for a prolong period of time in the Libyan town of Kufra, where they were refused their right to communicate with the UNHCR Libya, no Refugee Determination Status and were deported without any information of the decision to deport them back to their country of origin but were obliged to enter a plane back to their country.

Fifteen of the Eritreans were taken to be hijackers and were detained. According to more information:

“There were initially sentenced to five years imprisonment but this was eventually reduced to two years by the Supreme Court. Their sentence also carried an expulsion order.”⁴⁶³

Deportation of Black Africans by North Africans

The inhuman deportation practices of sub-Saharan Africans in the desert is not an issue of the Libyan government alone but the other North African states like Morocco, Algeria and Tunisia. This is what I call ping-ponging in the desert. If Tunisian boarder guards arrests sub-Saharan Africans entering their country, they usually carry them to a destination in the desert and drop them there.

“We were carried in trucks by the Tunisian boarder guards and dropped in the desert. They showed us a light very far away that was considered to be Libya. We trekked for close to three days without food and water under very hot sun before reaching Libya.”⁴⁶⁴

⁴⁶³ Hamood 2006, p. 37.

⁴⁶⁴ Interviews with Nigerians, Cameroonians, Sudanese. This interview was conducted on the 21st of March 2006 in Tripoli.

It does not mean that after the long distance the sub-Saharan Africans will enter Libya. At times they are apprehended by the Libyan border guards, this means taking the person back into the desert and deposit to make another journey to the next border country. It may be back to Tunisia. At times it is true but in most of the cases the distances are usually longer that it takes about three days to make up the journey into Libya.

The case is the same with the Algerian government, many sub-Saharan Africans who were deported from Algeria into the desert said,

“Many people die in the desert from thirst and hunger. There are graves in particular places in the desert where deportees have to burry their friends who could not support the harsh conditions in the desert and had to die. For those of us who made it out of the desert after deportation always thank the living God.”⁴⁶⁵

5.4. Conditions during Deportation

The deportation conditions as mentioned by those who underwent it are very hard. It is said that the trucks the Libyan government used to deport Chadians and those from Niger are always well locked under very hot conditions without something to eat or drink. Driving through the desert without any stop to allow the deportees to go to toilet. The group of Chadians who were deported but later came back to Libya said:

“The Libyan police officers are still using the old method of carrying deportees through the desert without food and water to drink. It is very hard because many people suffer from excess thirst and hunger. Worst of all we are packed in the long trucks like cows to the slaughterhouse. In the southern part of Libya, many things do happen. At times this hard way of deportation leads to deaths.”⁴⁶⁶

In May 2006, sub-Saharan Africans in deportation camp in. staged a strike due to the poor conditions they were kept under. As already mentioned, they were provided with

⁴⁶⁵ Interviews with Nigerians, Cameroonians, Sudanese. This interview was conducted on the 21st of March 2006 in Tripoli.

⁴⁶⁶ Interview with some Chadians who were arrested and detained in the detention facility in Kufra and later deported back to the desert. This interview was conducted on the 20th of March 2006 in Tripoli.

bread and water mornings and evenings. The strike made many diplomats to intervene to rescue their citizens. The Cameroonian representatives in Libya organised and ten Cameroonians were deported to Cameroon than to continue under the prevailing inhuman conditions.

Libyan government has always chartered planes if the deportees are many. The country does not take into consideration if a deportee is sick or not. An ambassador in Libya from sub-Saharan African country said:

“Some deportees, including sick people, had to stand for five six hours in the plane, which had no toilets. Those taken by road via Chad or Niger faced even more difficulties. If the transport vehicles had problems, Libyan officials stranded the deportees and the embassy never heard what happened to them.”⁴⁶⁷

6. Analysis of the Camp System in Libya

The strongest waves of the Libyan camp system against migrants, asylum seekers and refugees suffer from extreme isolation and complete lost of rights. The camp regime in Libya does not take into consideration the inexhaustible lists of human rights: the right against torture, the right not to be arbitrary arrested and detained, the right not to be subjected to inhuman, cruel and degrading treatment, the right of the child, the right to a fair trial by a proper constituted court, the right to free movement, the right to education and the right to work. It is clearly justified that regional and international instruments protecting the well being of all are infringed in relation to detained asylum seekers and migrants.

The treatment of the migrants has exposed them to destitution, racism and other forms of brutal attacks both in detention and when released. They are punished for no crimes committed. As one of them put it to me; “we are criminals without crimes but because we entered this country without documents to seek for protection.” The operation of the officials is discretionary without checks and balances. Intervention for the Libyan government to institute an asylum procedure falls on deaf ears. The government concentrates on the camp system to send back home to the countries these detainees are coming from in order to generate negative information to deter many more from

⁴⁶⁷ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 56.

entering the country. The manifestation of such degree of human rights abuse minimises the struggles and lives lost to obtain these human rights instruments. These attacks have turned Libya into an inhuman state. This is affecting the relationship between Libya and other sub-Saharan states, which feel their citizens, are being dehumanised for oil to the EU states. This behaviour is amounting to the disrespect of democratic principles and the rule of law and the risk is that it can increase. Libyan battered human rights extend to racism and isolation, which have made the government to turn to random controls of people who look “foreign” and especially black Africans. This has reduced the blacks to the last rung of the ladder and is easily attacked verbally and physically by all. Police officers always attack blacks on the streets to ask for documents and collect whatever Libyan Dinar they carry.

6.1. Refugee Status Determination Procedure

The camp system in Libya is used to detain supposed asylum seekers and other migrants wanting to settle in Libya or attempting to cross over into the EU territory in search for effective protection. They are as well used to detain and deport asylum seekers deported from the EU territories. Libya does not have a national asylum law or procedure to determine claims of asylum seekers. To Libyan authorities, asylum seekers are not found in Libya but migrant searching for work to improve their economic situation. To the Libyan authorities, the Libyan government can institute a law to determine asylum claims when the need be and that is when asylum seekers start complaining that they need protection. Until now, they have not felt such a complaint and that is why they do not find the law necessary. This can be justified from a declaration from the Libyan director of the Passports and Nationality Office:

“We do not have a law for this...if you do not have these problem, you do not need a law for it...when people start to complain that they need asylum then we’ll know that we need a law.”⁴⁶⁸

As earlier mentioned, Libya is not a signature of the 1951 Geneva Convention for refugees and its Protocol of 1967. Without these conventional rights, it is not clear how the European governments are operating with Libya. Libya is not bound by the clauses of the Geneva Convention and its Protocol. This makes Libya to persistently abuse,

⁴⁶⁸ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 20.

refuse and deport people who need protection. Those not deported, are detained in facilities where their rights as refugees go unrecognised and their human rights abused.

Despite the lack of asylum procedure in Libya, the UNHCR office in Tripoli has granted refugee status to those who filed in their claims with the office. According to the UNHCR office:

“Between 2000 and 2003, 831 asylum requests were lodged with the UNHCR and 381 individuals have been recognised as being in need of protection. During this period, the number of applications increased (from 149 in 2000 until 389 in 2003). Concerning 2004, in reference to the period going from January to October, the UNHCR received 656 applications among which 225 have been recognised (34%).”⁴⁶⁹

These documents issued by the UNHCR office are not usually recognised by the Libyan police and immigration officers. That is why many of those carrying the documents are found in detention facilities. There is no Memorandum of Association or Accord de Siege between the Libyan government and the UNHCR in Libya. The UNHCR office has been in Libya since 1991. The arrest and detention of recognised asylum seekers of the UNHCR disturbs the office from carrying on with its duties. The Libyan government has allowed UNHCR access only to one detention facility and that is the El Felah in Tripoli. The UNHCR, in an interview with me regret the fact that they cannot have access to other camps.

6.2. Accommodation

In Libya’s detention camps, there is a complete lack of basic necessities. There is not enough food, poor food quality, and lack of medicine, cloths. The manner in which the detainees are treated in these centres is extremely inhuman. The beatings of supposed asylum seekers and other migrant detainees in detention camps, provision of bread and water for food, sleeping on bare floors are evidence of Libya’s ignorance or wilful decision to infringe necessary international instruments guaranteeing the rights and protection of human beings.

⁴⁶⁹ European Commission: Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report, p. 53. Online: <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>, accessed on the 04 November 2007.

Lack of Infrastructure

Though Libya is engaged in the new policy instituted by the EU states to stop asylum seekers and other migrants attempting to use Libya to enter the EU states, she does not have enough infrastructures to accommodate her detainees. This has created a situation where asylum seekers and other migrants are packedful in cells. The cells accommodate more detainees than the required numbers. The detainees are found in very ugly military camps or barren police cells without aesthetic. The detainees are forced to sleep on hard floors. They sleep in an intimate manner touching one another. No preventive measure is taken if some of the detainees have contagious diseases. This risks the lives of other detainees as they touch one another. There is no privacy any longer. At times the detainees are so closed to one another to the extend that they breath on the faces of each other. There are usually unpleasant conversations that they are forced to pay attention to from different detainees. At times the detainees listened to languages one could not understand since people from different nationalities were locked up in the same cells.

Once one is detained, the person loses certain comfortable situation enjoyed in normal daily life. There is no bed, at night one cannot sleep because there is no enough space, at times other detainees who are psychologically disturbed and are unable to sleep at night will indulge into endless conversation. During the day, there is no possibility to do sports since there are no infrastructure and because the Libyan authorities do not see the need for detainees to do sports. The detainees become inactive and heavy. They usually sit in their overcrowded cells during the day and night. They go out when they have to work in cleaning the environment of the police or when one who knows handwork is taken to go and perform an obliged service. One can conclude that one of the Libyan government's intentions is to make the detainees very uncomfortable to discourage others from coming. It gives the impression that it has developed the strategy to punish the detainees as well.

Hygienic Situation

Many of the detainees are contaminated in different ways. There is the transfer of skin diseases from one person to the next through sweating from the heat, overcrowding and bodily contacts. The rooms are stinking from the toilets found in the very rooms where the detainees are found. As one person is defecating, the others are bound to inhale the pungent smell the faeces are emanating. There is no bathroom, which makes it

impossible for a detainee to take a bath, no matter how long the person is there. This alone makes the congested cell to smell unpleasantly from the different bodily odours. The detainees are left with the very dresses even if they spend two years in a detention camp. No toothbrush for the detainees makes their mouth to stink with the accumulation of food particles. There is a need for the Libyan government to become aware of the negative hygienic profile and the damaging effect on the health of detainees in detention facilities.

6.3. Women and Children

Forced migration is usually a big problem for all but Women and children are the most vulnerable. They are vulnerable to rape, sexual harassment and physical abuse with very few people taking these aspects very serious. Most of the women suffer in the hands of the Libyan authorities that abuse them in one-way or the other. Men usually do searching of the women on arrest. Most of the male authorities in course of the search behave with the women in an intimate and inappropriate manner that violates the rights of the women. They intrude into the privacy of the women and manifests sexist behaviour. The women are not offered the choice to decide who can search them and provide other services in detention.

Women might have escaped from domestic violent and find their selves in the hands of men again. This traumatises them a lot. In a case like this, the women need support from other women but on the contrary, they find them selves being dominated by men again. Many women have always been survivors of sexual violence, which is historically used as a weapon of warfare to humiliate the countrymen of the women in times of war. For women coming from such a situation, they are living in a profound disgrace. In such a situation, women usually feel freer to share their feelings with other women than men. But this is usually not the situation in Libya.

Women are vulnerable to sexually transmitted diseases as they perform sex without their consent and without condom with some boarder guards or other police officers. At times they become pregnant with men that were never their wish. A situation of this nature hunt the women all through their lives and their integrity threatened. In cases like this their family and the society as a taboo reject most women.

In the case of children, many of them are abused as they are incarcerated in the same cells with adults. It may be some of them are fleeing from countries that adults wanted to abduct them to become child soldiers. This has created a degree of fear in their minds.

Instead of bringing them to a place like a school where they can benefit from a therapeutic treatment by mixing with other children, where they could learn and create new friends to discuss other aspects of life that are interesting for children, they are locked up in detention camps with adults.

The locking up of children in detention camps is an infringement of the Convention of the Rights of the Child (CRC) which in its Article 37 prohibits the detention of minors except as a last resort and then only for the shortest possible time. Children in detention are forced to deteriorate because they do not go to school but listen to very hard stories narrated by frustrated adults during detention. The Convention on the Rights of the Child (CRC) also states in its Article 3 that;

“Services and facilities responsible for the care or protection of children...conform with the standards established by competent authorities, particularly in areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”⁴⁷⁰

The Libyan state does not take this responsibility to provide an unaccompanied child a guardian, or to identify their other needs or to search for accommodation for them. Worst of all, there are no NGOs in Libya that can assume such functions. No measure is taken by the Libyan government to monitor the well being, physical security and other conditions of children in detention. Worse of all, the UNHCR is not allowed access to these facilities where the children are found. So this usually goes unnoticed. The Libyan government does not see this as a necessity. They are completely ignorant of the rights of a child and that is why the children in detention are brutalised with their parents.

If a minor is caught, there is no existing government program to trace the family of the minor to reunify them. The child is dumped in the detention facility and later released on the streets. Or the government will look for a manner of deporting the minor out of the country. Even if it means sending the minor to a country which does not belong to the minor. Minors that are unaccompanied are always threatened with deportation from the Libyan government. The Libyan government need more training on how to treat minors, accompanied or unaccompanied.

⁴⁷⁰ Article 3 of The Convention on the Rights of the Child of 20 November 1989.

6.4. Detention

Supposed asylum seekers and other migrants without a legal status are arbitrarily detained constantly and are subjected to very poor conditions in which they are abused psychologically and physically in Libya. According to FRONTEX: "In Kufra the delegation visited the detention camp for illegal migrants where 130 sub-Saharan citizens were detained. The condition of this structure can be described as rudimentary and lacking in basic amenities."⁴⁷¹

Meanwhile the "Sources of the General Department for Public Relations and Co-operation at the General People's Committee for Public Security reported that the security authorities had detained 1258 infiltrators from different nationalities... It said that these were about to embark on an illegal immigration from the Libyan territories to Europe The operation took place during the period from 01 to 11th of September 2006."⁴⁷²

Meanwhile: "A January 17, 2006 press release by the Italian Ministry of Interior, concerning a meeting between Libyan leader Mu'ammarr al-Qadhafi and Italy's then-Interior Minister Giuseppe Pisanu, stated that in just over one year Italian-Libyan cooperation had prevented 40,000 undocumented people from leaving Libya."⁴⁷³

The detainees are never told of why they are detained or for how long they will be detained. The poor detention conditions and the excessive long period tantamount into the abuse of many international and regional Instruments. The detainees do not have access to doctors when they are ill, are not able to communicate with the outside world, lack of interpreters during hearings. They are beaten and meanwhile the women detainees are usually sexually abused.

Generally, in regards to international and regional instruments asylum seekers should not be detained. The Geneva Convention in its Article 31 stipulates that government "shall not impose penalties, on account of their illegal entry or presence, on refugees

⁴⁷¹ FRONTEX-Led EU Illegal Immigration Technical Mission to Libya, 28 May-5 June 2007, p.7.

⁴⁷² The Tripoli Post of Saturday, September 23-29, 2006, Issue No.114.

⁴⁷³ Human Rights Watch: European Union. Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees. October 2006, p. 12. This information is got from <http://hrw.org/backgrounder/eca/eu1006/3.htm> accessed on the 21 of November 2007.

who, coming directly from a territory where their life or freedom was threatened...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.”⁴⁷⁴ This article further states that signatories of this Convention are not supposed to restrict the movement of such refugees except in exceptional cases. In the case of Libya, the movements of recognised asylum seekers are strictly restricted while in detention. This abuse of the Geneva Convention by the Libyan government arises because Libya is a country that does not respect any international law or treaties.

Libyan’s treatment and detention of asylum seekers does not correspond to the Convention of 1951. In the first place, Libya does not have any mechanism to distinguish an asylum seeker from a migrant. This has created a situation in which Libya bundles every migrant to be an “Economic Migrant” searching for a job. The other premise is that recognised asylum seekers of the UNHCR are still detained by the different Libyan authorities. This second category of people clearly falls under the Convention but the Libyan government does not respect them. They are supposed to be protected by Article 31 since they are already in the asylum process. In some of the cases I interviewed, they claimed the document given to them by the UNHCR was confiscated and destroyed by the authorities. Most of these people are detained for a very long while. In this situation, the Libyan government is using detention as a punitive measure.

Detention is distressing for asylum seekers and other migrants. They always feel themselves in prison even if the conditions are a little bit better like in El Felah. The detainees have not committed a crime, do not know why they are detained and usually realised that the detention will be for a very long period. This situation becomes destructive for the detainees who fled from detention camps in their own countries.

Arbitrary and Prolong Detention

Arbitrary detention is strongly condemned by international instruments. The Universal Declaration of Human Rights, stipulates that “no one shall be subjected to arbitrary arrest, detention or exile,” This very position is strengthened by the International Convention on Civil and Political Rights (ICCPR), in its Article 9, it is stated that “No one

⁴⁷⁴ Article 31 (a) of the Geneva Convention Relating to the Status of Refugees of 1951

shall be subjected to arbitrary arrest or detention or be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”

In Libya, the detention of migrants and asylum seekers is haphazardly done. It does not respect any law or any of the international instruments but usually executed from the feelings and positions of the authorities. This makes many migrants and asylum seekers to spend excessive long period in detention camps. Detainees go through an unfair procedure of judgement without legal assistance or translator.

Since it has been a practice that migrants and refugees are constantly being detained under very dehumanising conditions, a working group of the U.N. on Arbitrary Detention created elements to determine if the refusal of liberty of migrants or asylum seekers is arbitrary. Principle Three of this document states that a migrant or asylum seeker in detention “must be brought promptly before a judge or other authority,” and Principle Seven demands that a “maximum period should be set by law and the custody may in no case be unlimited or of excessive length.”⁴⁷⁵

Despite all these International instruments to protect the rights of migrants and asylum seekers in detention, the Libyan government does not live up to the defined standards. I interviewed many migrants and detainees in Libya who said if one is in a detention camp, he or she does not know when a release will come. They are usually detained for excessive long time as some of the cases already mentioned above. They are not promptly brought before the judge. There are cases where the detainees and former detainees confessed that they were delayed for over six months and released without seeing the judge. Other said they saw the judge for their first time after a year. There is hardly an authority who sees into the fact that migrants or asylum seekers detained should either be brought in front of the judge or be released in a short space of time.

With a situation like that of Libya, it is still not understandable how EU countries can minimise torture of asylum seekers and other migrants to treat in migration issues with

⁴⁷⁵ United Nations Commission on Human Rights: Civil and Political Rights, Including Questions of Torture and Detention, Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5, Situation Regarding Immigrants and Asylum Seekers, Online: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/39bc3afe4eb9c8b480256890003e77c2?OpenDocument>, accessed on the 04.11.2007.

such a country where these categories of people are constantly detained and tortured. In Europe, “there is a clear line of jurisprudence in the European Courts of Human Rights that the lawfulness of detention can cease if the proceedings concerned are not conducted with due diligence”⁴⁷⁶ This clause does not cover Libya. On the contrary, the Libyan authorities use detention as a tool to force the detainees to leave the country. That is using detention as a punitive measure. This constant attitude of the Libyan government infringes the ICCPR in its Article 10 prohibiting torture and cruel, inhuman or degrading treatment or punishment. The ICCPR protects migrants and asylum seekers against ill- treatment during pre - migration, transit, interception, custody, or return.

There are certain elements defined in the U.N. Standard Minimum Rules for the Treatment of prisoners (Standard Minimum Rules), just as in the European Prison Rules. According to these two standards, concerns are made on sleeping accommodation that meet minimum requirements of hygiene and health, adequate sleeping place, ventilation, air, heat, lighting. These are aspects lacking in the detention facilities in Libya. The European Prison Rules demand that individuals should have their independent cell or if they have to share, there should be enough space for each detainee, a separate bed and bedding. These are issues that Libya is not able to supply a tenth. In most of the facilities, the detainees are sleeping on the floor in overcrowded cells. The cells are usually barren and always very hot because of the number of detainees found inside. The detainees are forced to sleep on the floor in a very intimate manner, touching one another. And there is no more privacy. In this aspect of overcrowding, one of Libyan authorities said:

“It is difficult to find a quick solution to the question of overcrowding due to the huge number of illegal immigrants that enter the Libyan Jamahiriya ,” The government said such a large number requires “a large amount of funds not within the Libyan Jamahiriya capability.”⁴⁷⁷

⁴⁷⁶ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 39.

EctHR, *Singh v. Czech Republic*, section 2, January 25, 2005 confirming the jurisprudential line established in the *Chahal v. United Kingdom*, November 15, 1996. In *Chahal v. U.K*, the court recalled that: “any deprivation of liberty under article 5 para. 1 (f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 para. (1).

⁴⁷⁷ Human Rights Watch Volume 18, No. 5(E) September 2006, p. 39.

With such a standard, Libya is not yet ready to process asylum cases and so the EU countries should decrease from the deporting asylum seekers or accepting Libya to deal with asylum, refugees and other migration issues. Libya needs a long period to capture what international conventions are, why they are created and how they should be used to guarantee the rights of each and every migrants and asylum seeker. If the EU countries cannot capture this then they are part of the human rights abuse prevailing in Libya. The Libyan law and other international instruments that Libya is a signatory underscore the responsibility of the Libyan government to respect and protect the basic needs of each and every individual living in its society.

6.4.1. Communication with the Outside World

The migrants and asylum seekers in detention facilities in Libya as already stated are almost cut off from the rest of the world during the detention period. There is usually no telephone to inform their family members. Many of the detainees spend years in detention facilities without anybody knowing where they are.

On the other hand, communication between the authorities and the detainees is through beatings and other forms of maltreatment. It is actually prohibited to question an issue or to decide for oneself during detention. The case of food already mentioned, where a detainee couldn't express a will not to eat. One is forced to eat. Or the case where the detainees wanted to ask the director of a detention facility why they were detained. This ended up in serious beatings of the detainees and some brought into secluded rooms without light for some days. The detainees are bullied every moment upon as they come in contact with the authorities. This has made them to live in constant fears. If there is a serious issue to inform the authorities, the detainees usually show all forms of politeness. That is they are forced to behave like children demanding a favour from their parents.

At this stage, the detainees have lost the consciousness they have in normal daily life to prove to their environment that they have a certain degree of independence, freedom and rights over their lives. This state of feeling that all is gone has reduced the detainees into human beings without life or rights. Most of them have lost their real colour, are changing drastically in looks and are living in a state of continual psychological torture. Communication between visitors and detainee is carried on under strict supervision of one of the guards. The guards do not want any negative information about the detention

facilities to filter out. That is one of the reasons why they have to be present in a situation where a visitor is accepted. Many of the detainees have criticism to make in relation to the living conditions in the facilities but they are usually afraid if a police officer or boarder guard is around. In case of either of these forces, the person does not risk because the repercussion is very harsh when the visitor is gone. The level of communication is one of a superior to an inferior in whom the detainees have to do what the police officers are border guards are saying and not discussions between them.

This lack of formal or smooth communication between the guards and the detainees usually block the Libyan authorities from understanding the real reasons why the asylum seekers and migrants are in their county. If there was a degree of smooth communication between the detainees and the authorities, that might have developed some trust that will lead the authorities to understand the detainees and vice versa.

Since a great majority of the sub-Saharan Africans cannot speak Arabic, this has made it possible for some of the guards to qualify them as unintelligent. This stereotype is greatly strengthened because it is difficult for a sub-Saharan detainee to create a relationship with the guards and challenge the already existing clichés since their Arabic level is zero. Most of the guards expect the detainees to speak Arabic but do not see them selves at the other side of the coin that they cannot speak the language of the detainees. In order to cover up, they believe they are in Libya and must speak Arabic since it is the official language. According to G.B. from Sudan, “the guards believe that the sub-Saharan Africans lack of knowledge in Arabic is a “moral” failing. The guards and police officers express in words the common view of the Libyan public that the detainees and other migrants should be able to express themselves in Arabic.”⁴⁷⁸ The few detainees who tried to speak Arabic at times had problems with the officers because what is spoken in Chad is not exactly the same as what is spoken in Libya. This irritates the officers as if the detainees were trying to provoke them. This at times leads to some beatings. Worst of all if the detainee makes an error to pronounce a word, which it may be provocative in Arabic, but not in the language from which the detainee is coming, it is a justification to beat calm out of the person.

⁴⁷⁸ Interview with G.B. from Sudan, this interview was conducted on the 24th of March 2006 in Tripoli.

Access to Counsel

In this country, the detainees do not benefit from counselling. Many detainees are brought to court without a lawyer after a very long time in prison. The state does not usually supply assistance to asylum seekers, refugees and other migrants in detention and there is no organisation to resume the responsibility. If a migrant detainee has a counsellor, it may be this is organised by a friend from outside. This lack of counsellor, coupled with the difficult language, make it difficult for the detainees to understand the law. To most of the detainees and Libyan authorities, counselling sounds like a western-orientated concept. If the counselling is created, the detainees could use it as a base to inform the counsellors the truth of why they were detained, the length of time they are in detention camps and many other information necessary for the case.

Access to Translator

The provision of a translator to understand the Libyan language is not available to the asylum seekers, refugees and other migrants in detention. This is an infringement of Article 5 of the European Convention of Human Rights, which insists on the importance to inform a detainee with immediate effect and in detail in the language best fit to the individual in relation to the detention. And in case of any charges against the person and the necessary procedures. This point is strengthened in Article 9 (2) of the ICCPR, which states, "Anyone who is arrested shall be informed, at the time of arrest, of the reason for his arrest and shall be promptly informed of any charges against him."

The lack of interpretation is an infringement of the rights of the detainees. In all the cases I interviewed, they complained of the use of force to extract information that will implicate them in a crime. At times they are presented certain forms to sign although they have not been informed of what is in the form. This is usually done after a very serious beating from the police officers. If a detainee attempts to ask, that will be followed by some hard beatings. In most cases, most of the forms signed by the detainees are made up crimes by the authorities to justify why they are detaining the supposed asylum seekers or migrants. In some interviews, it was revealed that some of the forms are deportation documents. They are used to facilitate the task of the officials to obtain travel certificates from the different embassies of the detainees found in Libya. The Libyan government usually minimises the aspect if the life of the person is threatened in the country of origin. At times to facilitate interpretation, a detainee brings other detainee. This is helpful but when it comes to critical issues, it may be inaccurately interpreted which does not work

to the favour of the detainee. It makes it difficult to carry on a discussion on sensitive issues like private matters.

6.4.2. Torture in Detention

The detainees are tortured from the minute they are caught. Many of them complained of serious beatings as they were caught either entering Libya, during city sweep or attempting to enter the EU states. These beatings inflicted a lot of pains, physically and psychologically. One of the main aims of these beatings is to repress to intimidate and construct a feeling of powerlessness over themselves. These beatings demonstrate the fact that they are of inferior value. Worst of all when they find themselves being pushed by the guards to different directions instead of telling them to move. The police officers usually spit on them and accuse them of smelling. At times they are tied up in a very uncomfortable manner with a stick in-between their legs to force a person to confess a crime, which the person did not commit. This is usually done to come up with a justification why some of the detainees are detained. According to D.D., “the use of repression generates psychological disturbances. And this psychological trauma is not usually being taken care of. The fear generated in one person affects the other detainees. That is usually one of the strategies adopted by the Libyan police officers. To beat one of the detainees and generate fears in others.”⁴⁷⁹

The guards and police officers inflict pains on the detainees in a conscious manner. The detainees are asked to stand on one leg, stretch out the body and put one finger on the ground to support the whole body. If a detainee falls from this position, the person will be seriously beaten. As these activities are going on, the other police officers around are amused. This form of torture is used to force some of the detainees to renounce their Christian faith and convert to Islam. The beatings, inhuman and degrading treatment lashed on the detainees are completely against regional and international conventions like European Convention of Human Rights, the International Convention of Civil and Political Rights and the Universal Declaration of Human Rights.

The level of torture in Libya exposes some relationships at times. This is because there are times that some of the detainees related to one another decide not to reveal their

⁴⁷⁹ Interview with D.D. who was locked up in Misrata for one month, this interview was conducted in Misrata, Libya, at their home on the 2nd of April 2006.

relationships as they enter the country. But during the beatings from the police officers or guards, some of these relationships are exposed through shocks. When a person witnesses how the other person is tormented, there is a reaction even if the person knows the situation cannot be rescued. The only point in the person's mind at the time is not to be guilty that a support did not come when the other person was maltreated. In this case, the other person will try to clean the wounds of the other relatives, comfort the person and pay a lot of concern as the other detainees observe with a lot of sorrow.

With the constant behaviour of the Libyan police officers and border guards, it is a justification that torture is legitimate in the country. These behavioural patterns of these officers do not respect article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The beating and at the same time being amused as the detainees are in pain shows the intention of the Libyan officers to inflict pain. This is in infringement of the Convention against torture and other cruel, inhuman or degrading treatment or punishment. For the purpose of this Convention, the term "torture" means:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected oh having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."⁴⁸⁰

⁴⁸⁰ Article 1 of The Convention against torture and other cruel, inhuman or degrading treatment or punishment. Adopted by the General Assembly of the United Nations on 10 December 1984, Registered ex Officio on the 26 of June 1987.

Control in Detention

The control mechanism is very stringent. The detainees are locked up in closed military camps with very hard iron rods that make it impossible for somebody to escape. A very high and thick fence surrounds the military camps. Some of the detainees say they feel like war criminals in military closed camps. They feel psychologically disturbed and especially when they think of the brutal behaviour of military personnel in most African countries. In these military camps, they are always under pressure that something negative will happen to them. This thought impacted negatively on their health. In case of a visitor, the communication between the detainee and the visitor is carried in the presence of a police officer. This control of communication abuses the freedom of speech that is the right of each person. They have not committed any crime that the officers can suspect them of sending out information to block necessary investigations. This notwithstanding, they feel themselves constantly under surveillance.

Early in the morning, the detainees are counted to be sure that none of them escaped the previous night. This counting gives the detainees the feelings that they are animals that the herdsman counts to assure the fact that none is lost. The detainees said they usually feel abused as if they are chattels during the counting ceremony. This impression of being like chattels dehumanises them and disturbs them a lot. As a mechanism of control, the detainees do not have any privacy since the guards will search the detainees from head to toe. They are asked to remove their trousers, shoes and socks. A total search is conducted before the detainees are locked up. Time and again, the guards or police officers usually control the cells as a routine activity. These routine controls of the cells frighten and dehumanise the detainees. It frightens them because of the method used. The police officers usually storm the cells in a brutal manner, shouting and beating especially when there is a problem between the detainees. With the overcrowded cells with people from different backgrounds, certain problems erupt.

Every minute action of the officers considered as an offence is controlled and sanctioned. For instance when a detainee refuses to eat because the food is not good, that will earn the detainee some beatings. As they eat the officers affect stringent control ensuring that every one of them eats even if there are complaints about the very poor quality. Each activity is subjected to regulations and control. In course of the general control at times, the guards usually collect precious goods and money from the detainees without indicating.

Racism in Detention Camps

The development of the discussion of racism in the camp system has mainly focused on the exclusion and dehumanisation of the people found in the camps. Racism has as well a negative impact on the health of the people discriminated upon or treated poorly because of phenotypic different features. The act of the police officers and the border guards can be deduced as a manifestation of racism. The method used in processing issues against the sub-Saharan Africans is different as compared to methods used to process issue concerning Libyans. Continues beatings, search, bullying and the environment in which they are kept while in detention.

6.5. Medical Health Care

Public health is the science used to prevent diseases, encourage good health and prolong life. But that is not the case in relation to sub-Saharan Africans in Libyan' detention camps. Access to health care is denied to the detainees. Though in Libya it is stated that one can have free health care, there are certain treatment and drugs that are bought by the individuals and are usually expensive. For the detainees, it is worse because in detention, they do not work for money. That means that the state must assume the responsibility to provide drugs and good health needs since the detainees do not have money. They do work in detention but it is a sort of punitive measure and at the same time, a form of exploitation. The detainees are mostly refused medical treatment in detention centres. The officers do not pay attention if a detainee is ill. They do not want to believe an individual is sick until the person is found in a critical condition. To some of them, they do not believe that black people need to undergo a certain degree of treatment like the Libyans.

Another reason is to avoid detainees benefiting from the health system of their country. They think usually that the detainees came to Libya for better health services that could not be found in their countries of origin. All these thoughts construct a racist sentiment of thinking which instigate the guards or police officers to constantly beat the detainees to force them leave the country.

The insufficient and poor food quality in detention facilities negatively impact on the health of the detainees. They usually develop diseases like tuberculosis, acute stomach pains, food poisoning and at times general debility. The very poor conditions as well always regenerate the illnesses no matter how much drugs they take as long as they continue to live under such poor conditions. This is one of the reasons why they are constantly sick.

Though many of these asylum seekers are disturbed psychologically due to the destination which they find themselves, as they usually think of other family members that they do not know their where about and as they have flash backs to the very rough route they took to arrive their destination, they still do not have the possibility to be assisted psychologically. There is a need for a psychological support because many of them complained of continues tiredness and sleepless nights, trauma, accumulated stress.

This lack of proper health care of the detainees in Libya is an infringement of international instruments like the International Covenant on Economic, Social and Cultural Rights which states in its Article 12 that;

“Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”⁴⁸¹ More to this Covenant, Article 12 .1 states that parties recognize “ the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Additionally, the right to health is emphasized, inter alia, in article 5 (e) (iv) on the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, as well as in article 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and in article 24 of the Convention of the Rights of the Child of 1989. There are many regional human rights instruments that recognise the right to health, for instance, the European Social Charter of 1961 as revised in its article 11, the African Charter of Human and People’s Rights of 1981 in its article 16.

From these above-mentioned international instruments, Libya does not keep up to the standard required when it concerns detainees of other parts of Africa and especially sub-Saharan Africans. The right to health of these detainees are constantly being abused. This has led to deaths and other tragic consequences. Health’s supposed to be an

⁴⁸¹ Article 12 of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000).

aspect of “complete physical, mental, and social well-being and not merely the absence or infirmity.”⁴⁸²

6.6. Deportation from Libya

So long as Libya is not bound by article 33 of the Geneva Convention of 1951 because she is not a party to it, she deports in a haphazard manner. Libya does not respect any international or regional treaties guaranteeing the respect of human rights of asylum seekers, refugees and other migrants. Article 33 of the Geneva Convention obliges the contracting parties not to expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be at stake on account of his race, religion, nationality, and political opinion. This is not respected in Libya. Libya does not only deports individuals back to countries where their lives are at stake but wilfully deport individuals in a desert without water or food. In order to carry on deportation, Libya does not assess the risk that can affect the deportee if deported to a country where his or her life is in danger or in the desert where there is no water or food.

Detainees are not usually taken to courts to be judged to access if the person should be deported or not. Deportation is a discretionary decision of the police officers or border guards. The deportee has got absolutely no right to defend his or her self. Even if the deportee has a disease like AIDS at the advanced stage that can be treated in Libya but cannot be treated in the country of origin of the deportee, it is difficult for such deportee to stop his or her deportation.

The extra-territorial camps have been seen as instruments used to stop asylum seekers and other migrants wanting to cross over into EU states and be deported back into their countries of origin. These camps are part of the EU machinery to manage migration. On the other hand, deportees from Europe are kept in these camps and later deported to their countries of origin. This is facilitated with a readmission treaty Italian government signed with the Libyan government. “Libyan officials told a delegation from the European

⁴⁸² Definition of health as found in the Preamble of the Constitution of the World Health Organisation (WHO).

Parliament visiting Libya the previous month that Libya's "goal is to repatriate all illegal immigrants we receive from Italy."⁴⁸³

⁴⁸³ Human Rights Watch: European Union. Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees. October 2006, p. 12. This information is got from <http://hrw.org/backgrounder/eca/eu1006/3.htm> accessed on the 21 of November 2007.

Chapter VI. Germany: An Example of Internal Exclusion and Externalisation

After having studied the extra-territorial camps, I am now going to concentrate on one example of internal camps and those are the asylum camps in Germany from the moment asylum seekers file in their claims in one of the branches of the Federal Offices for the Recognition of Refugees to when they are either deported, recognised or obtain other status. Before delving into the camp system, a summary on Germany's geographical, socio-political and economic situation will be presented.

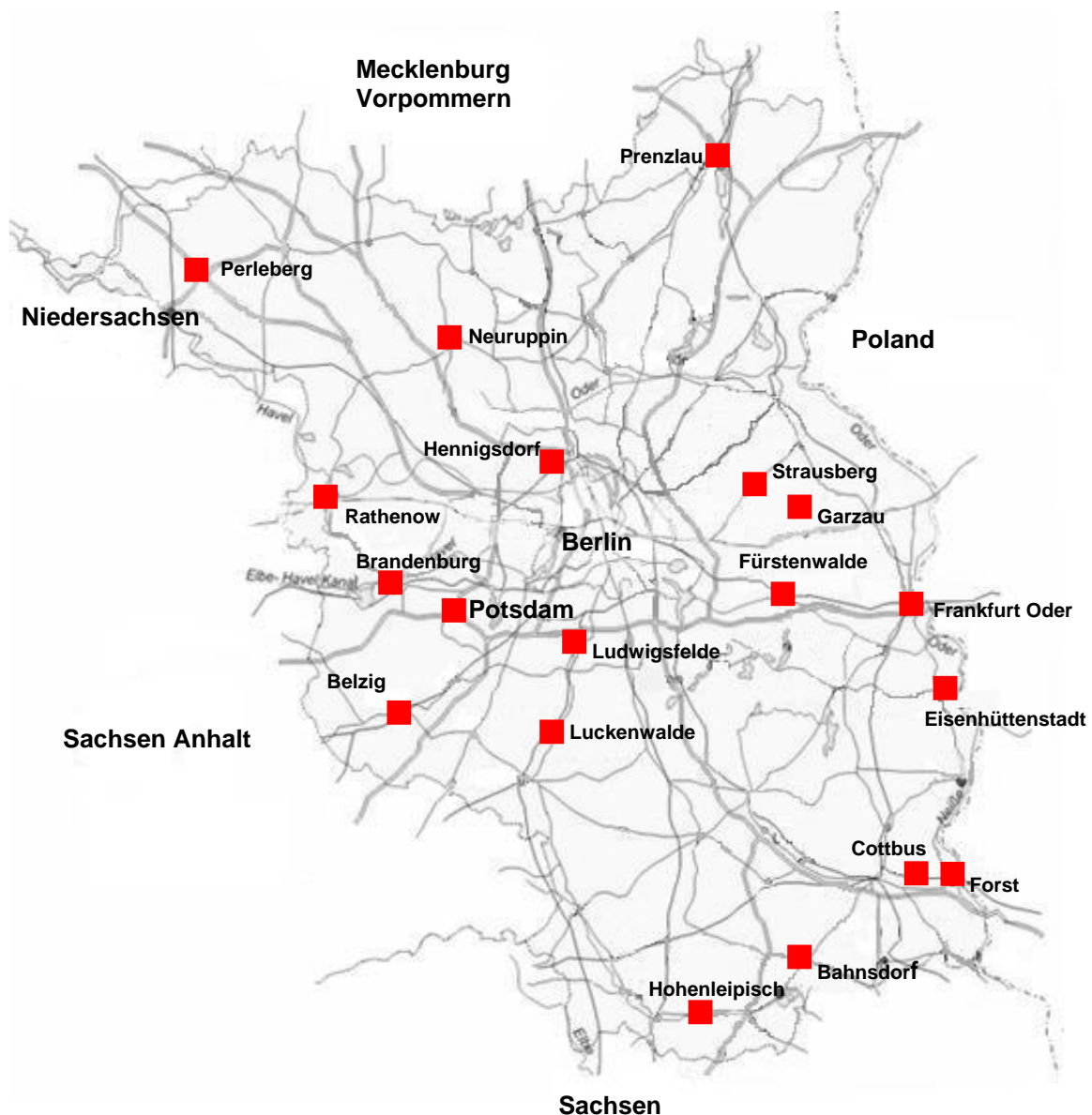


Fig. 14 Overview of the Camps in Federal State of Brandenburg, Germany ■

Geographically, Germany is found at the heart of the other EU countries. For instance, at the North, Sweden and Denmark, at the West, Belgium and Netherlands, at the South, Switzerland, Austria, Italy and France and finally at the East, Poland, Czech Republic, Slovakia and Hungary. This makes it difficult for migrants or asylum seekers to enter Germany directly without transiting through a third country.

Politically, Germany is one of the most influential countries of the EU. It is a country quite different from the other case studies in this work since there is the existence of human rights groups, initiatives, churches, trade unions, women groups, pro asylum institutions which can organise them selves independently from the government and to a certain level influence decision taken in the country. With the existence of these organisations, many struggles exist to break down borders and the camp system instituted by Germany and other European Union states to facilitate the ways for those seeking asylum to have access to file their asylum cases and seek for real security. Germany is a country where the different arms of the government-judiciary, executive, legislative and the media are supposedly independent from one another.

Economically, Germany is graded as one of the world's leading industrial nations with very high exports, GDP and good business within Europe. "As the world's third strongest national economy, Germany holds a leading position in terms of its total economic output. With the highest gross domestic product and the largest number of inhabitants in the European Union, it is the most important market in Europe. In global trading of goods and services, the Federal Republic of Germany is in second place after the USA."⁴⁸⁴ Germany is an industrial country that does not have a high unemployment rate like Libya or Ukraine.

"Collective asylum homes in Germany are homes where asylum seekers were supposed to be kept for a short period of time meanwhile their asylum claims are processed in courts. These transit homes (Übergangswohnheime) have become permanent, where asylum seekers spend up to over fifteen years in very harsh conditions."⁴⁸⁵

⁴⁸⁴ German Press and Information Office: Germany in brief. Germany as a centre of business. 2006. Online: <http://wm2006.deutschland.de/EN/Content/Host-Country-Germany/Germany-in-brief/germany-as-a-centre-of-business.html> , accessed on the 3rd of March 2008.

⁴⁸⁵ Nsoh, Christopher Ndikum: The Exclusion and Externalisation of Asylum Seekers into Collective Asylum Camps, Transit Processing Centers and Regional Protection Areas. In: Neue Gesellschaft Für

The topics in this work will treat different themes that will portray the Fortress Europe ideology to exclude, isolate and finally force refugees and asylum seekers already living in the EU states to leave. Some sort of a “continent cleansing.”

These sections will be divided as follows:

Accommodation

This section will focus in specific aspects of the socio-economic conditions in which asylum seekers are forced to live.

The nature of freedom of movement will be the sixth topic. There are a lot of bureaucratic hindrances originating from the law and the use of extra- judicial forces by officials. The asylum seekers can only go out of the districts where they were dispersed under defined conditions.

In this work certain definitions are made, for example, an asylum seeker according to paragraph 63 of the law governing the asylum procedure (§63 Asylverfahrensgesetz) is somebody whose asylum claim is still pending. The claim has neither been rejected nor recognised. A former asylum seeker can either be somebody who has been recognised according to Article 16 (a) of the German Constitution (Grundgesetz) or Paragraph 51 of the Aliens Residential Law (§ 60 AufenthG), somebody whose claim was never recognised but who got married to a German or a European citizen and obtained a residence permit.

Meanwhile there are some people whose cases were completely rejected and they are still living in the country because there are no legal documents to deport them. These people are known to have a tolerated stay according to paragraph 60a (2) of the law governing the provision of services to asylum seekers (§ 60a 2 Aufenthaltsgesetz). Another class of people with a tolerated stay are those whose claims were not accepted but could not be deported because of humanitarian reasons. For instance, somebody from a country where there is a war.

In order to treat an example of a EU internal camp, it is of great importance to mention the directives of the Council of European Union of 27 of January 2003, laying down the minimum standards for the reception of asylum seekers. "The aim of the Reception Conditions Directive is to harmonise legislation of Member States in this area. It is one of a number of initiatives, which are designed to create a level playing field across the European Union in the area of asylum and will limit 'secondary movements'. The Reception Conditions Directive is one of the building blocks of the Common European Asylum System, as provided for in the 1999 Tampere and 2004 Hague Programmes."⁴⁸⁶ This directive is not a specific document and does not really create any new conditions to improve the living conditions of asylum seekers in Europe. It reinforces the positions of the different governments with their weaknesses. For instance, the German government is able to maintain the law of residential restriction since Article 7 in the directives defends the point that an asylum seeker can move within a stipulated area defined by the state the asylum seeker is found.⁴⁸⁷

This condition already existed in the German law governing the asylum procedure and has limited their freedom of movement solely because they are asylum seekers.

Or Article 15 (1) of this Council of European Union Minimum standards for the reception of asylum seekers dealing with the issue of health, states that:

"Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness."⁴⁸⁸ This article also reinforces the German position that a sick asylum seeker can only be treated in necessary cases of sustained pains, acute illnesses or chronic diseases. Other form of illnesses is not treated since they are not "necessary".

Four years later, the European Commission issued its report evaluating on how the different EU states implemented the above mentioned directives. According to Franco

⁴⁸⁶ European Commission: Achieving common EU standards on reception of asylum seekers: Report on transposition and implementation of the Reception Conditions Directive. IP/07/1759, Brussels, Tuesday 27 November 2007, retrived from <http://www.libertysecurity.org/article1744.html> on the 16.02.2008.

⁴⁸⁷ Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers, Official Journal of the European Union (OJ), L 31/18, 06.02.2003.

⁴⁸⁸ Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers, Official Journal of the European Union (OJ), L 31/18, 06.02.2003.

Fratini, Vice-president, European Commissioner responsible for Freedom, Security and Justice said:

“The Directive has been duly transposed in the majority of Member States and has not caused any cutback of national standards of assistance to asylum seekers, despite worries that were originally raised. Creating a level playing field in the area of reception conditions is a priority for the Commission: therefore, I intend to propose amendments to the Directive, in order to limit the discretion allowed with regard to the level and form of material reception conditions, access to employment, health care, free movement rights and identification and care of vulnerable persons.”⁴⁸⁹

1. Background Knowledge

1.1. State Policies Regarding Asylum Seekers and Migrants

This part of the work is concentrated on the West German asylum regime for the period between 1949 until date. With the reunification of Germany, the West German regime was brought over to former East Germany. This led to the reunification of the asylum and migration policies in Germany. Immigration, labour migration, and asylum seeking are not new phenomena in Germany.

In the 20th century, due to the wars fought by Germany, after the Second World War, many people from Germany travelled overseas⁴⁹⁰, others fled the country and some were displaced. "Displaced Persons". During this period, there were about eleven million Displaced Persons in Europe. In the three western occupied zones of Germany alone, there were about 4.5 million (⁴⁹¹). The Allied forces repatriated some of the Displaced Persons to their countries of origin. Between the months of May and September 1945, about 5,2 million were already repatriated from Germany and West Europe⁴⁹². In order

⁴⁸⁹ European Commission: Achieving common EU standards on reception of asylum seekers: Report on transposition and implementation of the Reception Conditions Directive. IP/07/1759, Brussels, Tuesday 27 November 2007, retrived from <http://www.libertysecurity.org/article1744.html> on the 16.02.2008.

⁴⁹⁰ According to the statistics from the German ministry of statistics, until 1961, about 779.700 went abroad. To this, 384.700 in the USA, 234.400 to Canada and 80.500 to Australia. In: Heck 2005, p. 92.

⁴⁹¹ Jacobsmeyer, Wolfgang: Ortlos am Ende des Grauens: „Displaced Persons“ in der Nachkriegszeit. In: Bade, Klaus: Deutsche im Ausland- Fremde in Deutschland. Migration in Geschichte und Gegenwart. München 1992, p. 368.

⁴⁹² Jacobsmeyer 1992, p. 369.

to run the war economy during World War II, Germany was forced to stretch out its hands to external labour force to replace victims of war. Civilians from the occupied countries and War prisoners were forced to work in Germany.

In summer 1944, due to the advancement of the Red Army to the German Reich, many East Germans fled to West Germany. By October 1946, there were about 9,6 million refugees from Eastern Germany⁴⁹³. By the end of the 1960s, the integration of German refugees in Federal Republic of Germany was a reality. It was the same in the DDR⁴⁹⁴.

The influx of asylum seekers from 1953 to the 1970s posed little problems for the German society since Germany was in die need of labour force. There was an annual flow of about 10.000 asylum seekers; the majority were from the Eastern Bloc.

Alfons Söllner said:

“There was no stern bureaucratic and economic problem to integration because of the Economic Wonders, and because of the reception of the communist asylum seekers into the anti communist ideology that existed in the era of Adenauer.”⁴⁹⁵ Many asylum seekers were accepted. On the 26.08.1966, the annual conference of the ministers of the interior decided that asylum seekers from the eastern bloc should not be deported but be given a tolerated permit and be allowed in the labour market.⁴⁹⁶

The theme migration constitutes a vicious circle and a double edged machete where asylum seekers, refugees and migrants are needed to do dirty jobs created by industrialisation that Germans and other EU members could not do because of lack of work force but at the same time as usual, migrants are portrayed as "hard criminals" and "illegal migrants" to be fought against by strengthening the border police controls to prevent the inflow of unwanted migrants. With this ideology, in 1951, the German

⁴⁹³ Benz, Wolfgang: Fremde in der Heimat. Flucht-Vertreibung-Integration. In: Bade Klaus: Deutsche im Ausland- Fremde in Deutschland. Migration in Geschichte und Gegenwart. München 1992, p.382.

⁴⁹⁴ Angenendt, Steffen: Ausländerforschung in Frankreich und der Bundesrepublik Deutschland. 1992, p.152. In: Heck 2005, p. 93.

⁴⁹⁵ Söllner, Alfons: Westdeutsche Asylpolitik. In: Ashkenasi Abraham (Eds.): Das weltweite Flüchtlingsproblem: sozialwissenschaftliche Versuche der Annäherung. Bremen 1986, p. 200.

⁴⁹⁶ Herzog, Heike / Wälde, Eva: Sie suchten das Leben. Suizide als Folge deutscher Abschiebepolitik. Hamburg/ Münster 2004, p. 112.

ministry of the interior decided to reinforce the rules and regulations of the aliens' police (Ausländerpolizeiverordnung) of the Nazi regime.

Though pronounced, racist elements were removed from the law and furthermore, from the constitution, the right to asylum was respected⁴⁹⁷. But in 1951, the ministry of the interior informed the labour ministry that it is only by severe observation of the rules and regulations of the aliens police that foreigners and stateless people from the war and after the war in relation to the condition of Germany could be controlled⁴⁹⁸. Meanwhile, in 1956, the minister of the interior, Mr. Schröder argued in the parliament for a budget to the border police to be used against the "ten thousands of stateless foreigners"⁴⁹⁹.

In the 1960s, in the foreigners' law, the expulsion of stateless people, refugees and asylum seekers was executed in case of strong reasons that affect public security and law and order⁵⁰⁰. In April 1965, the German parliament voted a new foreigner law. The law constituted a rigid resident and work permit for foreigners from non European Economic Union states and gave the aliens offices the room to use their discretion in relation to the workers from other countries according to the economic situation of Germany. It also stipulated that who ever wanted to live in Germany and did not possess a German passport must have permission. Over this point, the official of the aliens offices decided by using their discretion⁵⁰¹. The foreigner law of 1965 gave Germany an almost unlimited power that the individual victims had relatively no right. A base to say that Germany can never be a country of Migrants.⁵⁰²

Although this work is on asylum seeking, migration and camps as instrument of exclusion and isolation from Germany, I am going to elaborate a little bit on migration to

⁴⁹⁷ Heck 2005, p. 93.

⁴⁹⁸ Source: German Ministry of the Interior (BMI) Nathusius an BMA, 22. Juni 1951, B 149/6258.

In: Schönwälder Karen: "Ist nur Liberalisierung Fortschritt?". Zur Entstehung des ersten Ausländergesetzes der Bundesrepublik. In: Motte, Jan / Ohliger, Rainer / von Oswald, Anne (Eds.) : 50 Jahre Bundesrepublik. 50 Jahre Einwanderung. Nachkriegsgeschichte als Migrationsgeschichte. Frankfurt - New York 1999, p.132.

⁴⁹⁹ German Parliament (Bundestag), 21 June 1956, p. 8075.

⁵⁰⁰ Schönwälder 1999, p. 130.

⁵⁰¹ Herbert, Ulrich: Geschichte der Ausländerpolitik in Deutschland. Saisonarbeiter, Zwangsarbeiter, Gastarbeiter, Flüchtlinge. München 2001, p. 211.

⁵⁰² Schönwälder, 1999, p. 127.

the former East Germany. Due to the lack of labour force, the former German Democratic Republic (GDR) signed contracts with Poland known as "Qualification Contract" (Qualifizierungsvertrag) on the 17 of March 1963 with other socialist states like Hungary, Algeria, Cuba Mozambique, Vietnam, Angola, China, Mongolia and North Korea. Before the fall of the wall in 1989, about 190.000 people with foreign passports were living in Germany. This shows how capitalistic the GDR was thinking. They needed people who could boost their economy but did not care of the human rights or security of people persecuted in one way or the other. This very mentality is plaguing the EU today. The EU tends to demonise asylum seekers but welcome migrants that they consider useful.

After the unification of Germany, in 1990, the Federal Republic of Germany cancelled the work contracts and those with temporary stay were to be left on their own when their visas expired. This condition made many of the contract workers to lose their status and was forced to seek asylum especially the Vietnamese. () Meanwhile others decided to live illegally.

The Guest Workers Phenomenon

After the Second World War, as earlier said, Germany like other European countries were in a great need of a labour force that the European countries could not provide. This made all the European countries to bring people from all over to cover the labour shortage. Germany, France and Great Britain were not left out "useful Migrants".

In 1955, Germany signed its first treaty to recruit Italians⁵⁰³. This is the reason that at the beginning of 1960s there were Italian workers in great numbers in Germany. In the years that follow, other recruitment treaties with other countries were signed. For instance, in 1960, with Spain and Greece, 1961, Turkey, 1963, Morocco, Portugal 1964, Tunisia 1965, and finally, Yugoslavia 1968. From the first year of full reinforcement in 1960 until the end of the recruitment in 1973, the foreigners' population in Germany rose from about 280.000 to about 2.6 million⁵⁰⁴. The guest workers were constituted of young men

⁵⁰³ Heck 2005, p. 95.

⁵⁰⁴ Bade, Klaus: "Billig und willig" – die "ausländischen Wanderarbeiter" im kaiserlichen Deutschland. In: Bade, Klaus: Deutsche im Ausland – Fremde in Deutschland, Migration in Geschichte und Gegenwart. München 1992, p.320 : Der Ausländeranteil an der Wohnbevölkerung in der Bundesrepublik wuchs von 1,2% im Jahr über 4,9% im Jahr 1970 auf 7,2 % im Jahr 1980. (The proportion of migrants living in Germany is increasing by 1,2 % yearly over 4,9 % in the year 1970 to 7,2 % in the year 1980.)

and a reasonable number of young women who were single. To a greater extent, these women had not learnt any craft in textiles, foodstuff, the classic "industries for women or working in service sector".

In 1973, the German government stopped the recruitment treaties during the oil crisis that affected the world. The German government wanted to return the guest workers to their different countries of origin. On the contrary the guest workers sought for a permanent residence. This obliged the situation to change from guest workers to immigration. Family members reunifying with their relatives in Germany accompanied this.

Asylum Seekers from 1970s

Before 1970, about 3000 to 5000 sought asylum in Germany. Most of these asylum seekers originated from Eastern Block. From 1968 to 1970, the number of asylum seekers increased to about 12000, this also led to a high percent of recognised asylum seekers. About 80% were recognised.⁵⁰⁵

In the mid 1970s, the situation reversed. The number of asylum seekers increased more and more due to the change of the structures of the countries generating asylum seekers. Wars and dictatorial regimes in different continents pushed some asylum seekers to make their way into Europe. People fled for example from the military regime in Turkey, the Coup d'Etat in Chile, subversion in Pakistan, the war in Lebanon, the Soviet occupation of Afghanistan and the civil war in Sri Lanka. At the same time asylum seekers from Eastern Europe and other parts of the world sought refuge in Europe, Germany included. This increase in number of asylum seekers caused the German parliament (Bundestag) to take a unanimous decision to abolish the right to appeal against a decision of a commission or administrative court in asylum claims.

In 1980, the parliament prohibited asylum seekers from working for two years and the social welfare assistance was changed from cash to objects. Added to those citizens from certain countries like Afghanistan, Ethiopia, Sri Lanka, Iran, Turkey, Bangladesh,

⁵⁰⁵ Heck 2005, p. 98.

and India were imposed to obtain visa before coming to Germany. In 1982, the Bundestag passed a law to put asylum seekers in to asylum camps.⁵⁰⁶

Baden- Württemberg was the first state to put asylum seekers into collective camps.⁵⁰⁷

In Bayern, observers noted that the reasons to bring asylum seekers into camps were “to deliberately prohibit the integration of asylum seekers into the German society and to create a meagre camp life. These conditions should function as a psychological barrier to prevent further influx of asylum seekers into Germany. The possibility for them to work was rejected.”⁵⁰⁸

The Revision of Article 16(2) of the German Constitution

As earlier said, the inflow of asylum seekers to Western Europe reached its peak in the 1990s especially after German reunification. In 1988 about 103.000 sought asylum in Germany but in 1992 the figure went up to 438.000⁵⁰⁹ Political discussions started discrediting asylum seekers. Negative terms like “Economic asylum seekers” (Wirtschaftsasyllanten) or “Misuse of Asylum” (Asylmißbrauch) was commonly used and finally in 1993 there was the revision of Article 16 (2) of the German Constitution, which states, “Victims of political persecution savour the right to asylum.”⁵¹⁰ In public, politicians at that era openly used racist slurs.

Such racist overtones could be heard for instance, from Jürgen Bregulla, (CDU) from Pohle, in the district of Schaumburg who was heavily applauded by members of his party when he presented a speech entitled, “Immigration is problematic” (Zuwanderungsproblematik) in which he described migrants as “criminals, pushers, pimps, robbers, thieves and thugs”. He further said, “In our state, there is a tumour

⁵⁰⁶ Heck 2005, p. 98.

⁵⁰⁷ Detmers, Gabi: Asylbewerber/Innen in Südbaden. Eine empirische Fallstudie. Diplomarbeit Univ. Konstanz, 1998/1999, p.24.

Online: <http://www.ub.uni-konstanz.de/kops/volltexte/1999/249>

⁵⁰⁸ Zepf, B.: Asylrecht ohne Asylyanten? Flüchtlingshilfe im Spannungsfeld von Weltflüchtlingsproblem und Abschreckungspolitik. Frankfurt/Main 1986, p. 73.

⁵⁰⁹ Heck 2005, p. 100.

⁵¹⁰ German Constitution, Article 16(2).

threatening the health of our society. It needs political surgeons to operate and do away with the tumour.”⁵¹¹

With the fall of the Berlin Wall, a stream of former contract workers from the former German Democratic Republic (GDR) immigrants from the former Soviet Union of German ethnic minority (Spätaussiedler) as well as asylum seekers from other parts of the world came to Germany. German politicians made it clear that the political aim was not to protect migrants in Germany but to gather votes. Little was done to change racist sentiments in the society.

The hatred of asylum seekers became obvious to the extent that in 1991, the Christian Democratic Union party (CDU) general secretary Rühle asked the CDU group presidents, city councils, state parliament and the citizens to make asylum a political theme. Two years later, the government parties in the different Federal states and nationwide used the asylum politics to persuade the people of how problematic the asylum seekers are. On the 6 of Dezember 1992, a so-called compromise was reached between SPD, CDU, CSU and FDP, which led to some changes on the Article 16 of the German Constitution. On the 26 of May 1993 the changes were adopted in the German parliament with 521 in favour and 132 against. To concretise the plight of the asylum seekers, on the 01.07.1993, the revised Article 16 of the German Constitution went into force⁵¹². This is known in German asylum and migration history as the “Asylum Compromise” (Asylkompromiss). This so called asylum compromise was seen by many authors as more of an asylum issue but a restrictive "Migration compromise". This revision could be interpreted from three arguments, the restriction of the constitutional rights of asylum, a barrier for the German migrant from coming back and as well as a strategy to reduce future migration.

The revision of the article 16 (2) of the German constitution brought about the "Safe Third state" regulation in which if an asylum seeker passes through another state, which is considered to be a safe and democratic state to seek asylum in Germany, the claim of the asylum seeker will not be accepted. This person will be carried back to the first safe

⁵¹¹ CDU- chairman Jürgen Bregulla: Immigration is Tumour. In: Schaumburger News, 01.04.2004.

Newspaper: Bregulla had this extreme position since 1996. In: Norddeutscher Rundfunk, 02.04.2004.

⁵¹² Herbert, Ulrich: Geschichte der Ausländerpolitik in Deutschland. Saisonarbeiter, Zwangsarbeiter, Gastarbeiter, Flüchtlinge. München 2001, p. 319.

state he or she first entered. Another important point is an asylum seeker coming from a state that is considered as a safe country. In such a case, the asylum demand will be quickly looked into and the person will be sent back at the airport.

As a reaction to the constitutional revision, in 1993, asylum seekers, refugees and migrants living in Germany suffered from rising brutality and dangerous attacks.

Homes of migrants were attacked with fire, bombs and arson in the cities of Hoyerswerda and Rostock. "Some youths, Skinheads and so called Neonazis in both parts of Germany were brutal and dangerous to foreigners that led to deaths."⁵¹³ In 1992 for instance, a report from the German internal secret service (Verfassungsschutzbericht) 2.584 racist attacks registered, 74% more than in the previous year.

Since 1992, the living conditions of asylum seekers continued to deteriorate. Additionally, the rate of deportations increased and with brutal means that some times causes death. For instance, "A 30 year old man from Sudan, Aamir Ageeb, died at the late 90s during deportation from Germany on the 30th of May."⁵¹⁴ According to Heike Herzog and Eva Wälde, " 5 people died during deportation, 234 wounded, 21 died after deportation, at least 361 were maltreated and persecuted in course of deportation and at least 57 disappeared without any trace."⁵¹⁵

The increased number of asylum seekers also led to the acceleration of the asylum procedure, in the courts. If the case of an asylum seeker is rejected, he or she has a very limited delay to collect more evidence to file for an appeal.

1.2. The Legal Framework

The development of the German law of asylum is similar to many other countries. Germany drew most of her inspiration from the 10.12.1948 Universal Declaration of Human Rights (UDHR). Article 14 of this Declaration states the right of every persecuted

⁵¹³ Schmidt, Helmut: Handeln für Deutschland. 1993, p. 51.

⁵¹⁴ Busch, Nicolas: AUSTRIA & GERMANY. Two Africans Killed In Deportation Attempts. In: Fortress Europe? Circular Letter No. 58, Falun, Sweden, June 1999, p. 18.
Source: Neue Züricher Zeitung 31.05.1999, Christian Science Monitor, 11.06.1999, Inter Press Service 02.06.1999.

⁵¹⁵ Herzog, Heike / Wälde, Eva: Sie suchten das Leben. Suizide als Folge deutscher Abschiebepolitik. Hamburg/ Münster 2004, p. 15.

person to seek asylum in a safe country and to enjoy the asylum. This Article inspired Germany to continue long standing debates on this topic.

On the 8th of February 1949, members of the parliamentary council (Parlamentarischer Rat) decided to pass a draft of the right to asylum in the constitution. It was adopted in Article 16 (2), that “victims of political persecution will savour the right to asylum.” This was the very first Constitutional law in the world to give such a provision to foreigners.⁵¹⁶

As many other countries saw the right of asylum as a means to protect people threatened in their countries of origin, this was followed by the adoption of the Geneva Convention for Refugees by the United Nations on 28.07.1951. Germany ratified this Convention in 1954. In Article 1 (2) of the Geneva Convention, which has already been written in previous chapters, it is stated that:

“As a result of events occurring before 1951 and owing to well founded fears of being persecuted for reasons of race, religion, nationality, member of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it.”⁵¹⁷

In 1993, Germany revised article 16 a of the constitution which limited asylum only to political reasons after a broad base debate that took place in the second chamber of the German parliament (Bundesrat) in 1992. This led to a revision of the German constitution with more than two-third votes. This revision also gave the possibility for the German parliamentarians to include the concept of safe third country. According to this concept, asylum seekers who travelled into Germany through another country considered to be safe, democratic and peaceful were refused the right to asylum. With the 1993 revision of the constitution asylum seekers cannot invoke a basic right to asylum in Germany. The safe third country concept is found in Article 26a of the Asylum Procedure Act (Asylverfahrensgesetz) of 1993

⁵¹⁶ Kimminich, Otto: Grundprobleme des Asylrechts. Darmstadt 1983, p. 98.

⁵¹⁷ Article 1, Geneva Convention for Refugees by the United Nations, 28.07.1951

Meanwhile Article 29 a of the Asylum Procedure Act 1993 stipulates the principle of a safe country of origin. This means if an asylum seeker arriving from a country, which is considered peaceful, respecting human rights and with a stable political situation, the asylum claim will be rejected as “manifestly unfounded” if the person does not present enough evidence.

Article 60a (1), provided special provisions to asylum seekers from a war or civil strife countries. These are people fleeing from a war or a civil war and other humanitarian disaster. People of this status could be received by Germany on temporary basis. These asylum seekers do not go through the asylum procedure. With former Yugoslavia during the war, article 32a was applied to receive civil strife refugees from this country. Civil war refugees obtained a Residence title for exceptional circumstances (Aufenthaltsbefugnis) which is basically equal to protection according to the 1951 Refugee Convention”

Article 60 (1) of the Aliens' Residential Act is very important in Germany today. Since Germany does not give full asylum rights because of the safe third country principle, there is what is known as “small asylum”. It provides another legal status than political asylum. Article 60,1 copies the wordings of Article 33,1 of the Geneva Convention of 1951. Under Article 60, any person seeking for asylum that entered Germany through a safe third country and has enough evidence has the right to small asylum in contrast to the “large asylum” mention in Article one of the 1951 Geneva Convention for Refugees.

Article 60 of the Alien Residential Law of 2005 suspends the deportation of an asylum seeker if it is considered that the person can be tortured, suffers inhuman treatment or humiliation or sentenced to death. And because of other considerable dangers to the person's life, limb or liberty. Usually a person of the stage is given a tolerated stay (Duldung). This does not mean that the person has got a legal right to stay in the country. Deportation has been suspended for a short while.

Article 104 (a) of the Residence Law provides the possibility for people with tolerated stay (Duldung) until the first of July 2007 who have been here for at least eight years without a family and six years with a family to obtain a resident permit.

The Debates on Migration to the adoption of a Aliens' Law, 2005

Many controversial debates developed for quite a very long while before the new foreigners law was adopted in 2005. Until then, the existing aliens law was the law of

1965. It was only in 1990 that the law governing the asylum seekers was revised in the German constitution. The so-called asylum compromise that came from the different political parties.

This revision regulated migration in three ways- the trimming of the constitutional rights to asylum, the limitation of the German evacuees of the Second World War as well as the perspective of migration. This revision also deterred the incoming of asylum seekers into Germany. For instance the airport rules in article 18 of the law governing asylum, states that asylum seekers from "safe countries" and those who are not in possession of any document or with fake passport or flight route and those who do not present complete documents must go through their asylum process at the transit section at the airport. This will be done under the strict control of the border police in a situation like detention in a period of about three weeks. The reason to this is a quick deportation in case of a rejection. As a result to these measures, many people are forced to live underground. The number of illegal people in the old Germany and Berlin rose between 1991 and 1994 from about 45.000 to 90.000. In 1997, 100.360 and in the whole of Germany, was 138.146.⁵¹⁸

The Debate on Computer Experts (Green Card Visa)

This section is important to demonstrate how the law that people seeking asylum in Germany are not allowed to work and how they are discriminated. How the German government has closed its eyes to human rights aspects but more focused on the economic growth of the country. This section also portrays how the German society and its representatives do not accept that Germany is an "immigration country" that needs migrants. The lack of specialists "Useful Migrants" in the domain of computer made the former chancellor Gerhard Schroeder to propose that Germany needs yearly the recruitment of 30.000 computer experts in order to solve the problem in this field. This proposition brought a very large opposition from the other parties and started a debate in Germany known as the Green Card Debate. The idea behind those challenging the coming of computer experts was to exclude the coming of migrants into Germany and to promote the make belief that Germany is not a migration country.

⁵¹⁸ Heck 2005, p. 124.

As a campaign strategy, Jürgen Rüttger attacked the proposals with a slogan "Children instead of Indians"⁵¹⁹ (Kinder statt Inder). This means, Germany should encourage the production of more children than to bring in Indians into their country. His main intention to use this slogan was to win the post of governor in the state of North Rhein Westphalia which campaign was going on at the time

The campaign of "Children than Indian" did not help the CDU leading candidate to be voted for the post of a governor. As he lost the campaign, the CDU and CSU saw it as an early warning system and immediately reversed their position and called for the recruitment of 20.000 computer experts yearly. Edmund Stoiber CSU said,

"Germany needs all the heads that can help our land and economy"⁵²⁰ meanwhile Peter Müller, the Governor of the state of Saaland CDU called for an alien law with a "Net Migrant" of 300.000persons a year. At this very moment, Angela Merkel as chairwoman of CDU and Günther Beckstein, the internal minister of the state of Bayern and of CSU proposed the tightening of the asylum law.⁵²¹ Finally, on August 1. 2000 the Green Card Visa went into force in which 20.000 computer experts could come to Germany and obtain a limited labour permit for five years and provided they are qualified and accept the salary criteria.

After years of strong resistance against migrants to Germany, it became a general consensus that there is no other alternative in Germany than to accept what is commonly known as "useful migrants". With the Green Card visa that entered into force and the need for more migrants, the then German chancellor, Gerhard Schroeder, proposed the migration topic in a particular manner in order to improve the German standards. That was the recruitment of highly qualified migrants into Germany.

⁵¹⁹ Lütgert Christoph: Kinder statt Inder – Die Parolen eines gescheiterten Zukunftsministers. In: Panorama, DasErste.de: <http://daserste.ndr.de/panorama/archiv/2000/erste7444.html> , accessed 10th April 2008.

Jürgen Rüttgers:"Mit dem Wort, dass es richtiger ist, unsere Kinder an die Computer zu bekommen, statt jetzt Inder, die eine Computerausbildung schon haben, aus den Ländern der Dritten Welt hier zu uns zu holen, mit dieser Aussage, finde ich, beschreibt man den Zustand richtig."(20. März 2000)

⁵²⁰ Heck 2005, p. 127.

⁵²¹ Münz, Rainer/ Ulrich, Ralf (Eds.): Deutschland: Schily beruft Kommission zum Thema Einwanderung. In: Migration und Bevölkerung. Bevölkerungswissenschaft. Humboldt Universität Berlin. Nr. 05/00, Berlin 2000.

At the start of the new Millennium 2000, a United Nations Organisation report on population sampling was published with the title "Replacement Migration: A solution to declining and aging populations"?

Is it a Solution to decline and Aging Population?" This report raised agitation that out of the 82.000.000 people in Germany, in the next 50 years, that is 2050; it will drop to 73 million. This report finally states that until 2025, Germany has to be taking in 500.000 migrants yearly.⁵²²

The Green Card Debate generated finally the debate of an alien's law in Germany. The then German minister of the interior, Otto Schily (SPD) created an independent commission under the chair of the former German female president Rita Süßmuth. The commission was composed of representatives from the different political parties, states and communes, as well as researchers and representatives from employers, trade unions and churches etc⁵²³. The chairperson of (CDU/CSU) in the Lower House of parliament, Friedrich Merz said the migrants should adapt to the "German leading Culture" (Deutschen Leitkultur).⁵²⁴

This brought a lot of criticisms from the other political parties. The media discussed it for months and it was qualified as an issue of "national identity" and socially accepted neo-conservative cultural racism. Despite the strong critics, CDU, in one of its first working documents from its self created commission to work on migration issues defended the position of the "German leading culture".

This led to a strong attack from the German Jewish community. The then president of the Jewish central council in Germany, Paul Spiegel, in a speech on the 9 of December, in front of the Brandenburger Tor, said, "Ladies and Gentlemen politicians, reflect on what you say and desist from playing around with verbal fire" He warned, "Is it the

⁵²² This information was got from the website of europäisches forum für migrationsstudien (efms): efms Migration Report. Januar 2000. UNO-Studie: "Replacement Migration": A solution to declining and aging populations? (SPIEGEL ONLINE 5.1.00 // SPIEGEL ONLINE 6.1.00 // taz 7.1.00), http://web.uni-bamberg.de/~ba6ef3/dokz00_d.htm , accessed on the 18.11.2007.

⁵²³ Münz, Rainer/Ulrich, Ralf (Eds): Deutschland: Schily beruft Kommission zum Thema Einwanderung. In: Migration und Bevölkerung. Bevölkerungswissenschaft. Humboldt-Universität Berlin Nr. 05/00.Berlin 2000.

⁵²⁴ Münz, Rainer/Ulrich, Ralf (Eds): Deutschland: Schily beruft Kommission zum Thema Einwanderung. In: Migration und Bevölkerung. Bevölkerungswissenschaft. Humboldt-Universität Berlin Nr. 05/00.Berlin 2000.

German leading culture to hunt foreigners, burn Synagogues and to kill homeless people?"⁵²⁵

Characteristics of the Aliens' Law

The very first time in the history of Germany to focus on the migration politics even if it is because of conditions beyond their reach. On the 4th of July 2001, the commission published its results with the title "To design migration- to promote integration". Certain aspects were expected from the migrants applying to fulfil the status. Aspects like age, qualification and language proficiency were taken into account. An applicant is not supposed to be older than 45 years and must be of good health and with a good financial stance. The commission proposed an in take of 20.000 well-educated migrants yearly for a five-year period of limited residence permit. The migration should be an initiative from companies and the need of labour.

The commission proposed that the photos of those who illegally entered Germany should be saved or stored and make it possible for the German authorities to have access to in order to limit an abuse of asylum. The commission proposed an acceleration of the asylum procedure and supported the recognition of people suffering from stateless and gender persecution in the asylum law. The commission proposed that schools and teachers are obliged to denounce undocumented pupils or students to the authorities. But the conditions of the undocumented people living in Germany were not mentioned in the report.

For the fact that nothing was mentioned about the undocumented people living in Germany, the Bishops conference that held in May 2001, presented a document titled "Life in illegality-a humanitarian and pastoral challenge". In this document, the Catholic bishops portrayed their knowledge of the poor conditions of undocumented people. These people have no rights in every aspect of the society and the bishops demanded a law that can afford a minimum social standard to this class of people. They also demand medical care for the undocumented people and measures that these people can claim their rights in court in case they work and are not paid by their employers.

⁵²⁵ In: Süddeutsche Zeitung, 30.12.2000.

One month later, in June, the protestant church made a statement to the immigration discussion in Germany. As the chair person of the protestant Church in Germany Manfred Kock regretted the fact that the alien law was economic oriented, the church demanded the widening of the law governing the asylum seekers and demanded that undocumented migrants should not be a taboo topic in Germany.

Despite the criticisms on the proposals from different quarters, in August 2001 minister Otto Schily presented his migration law proposal. The law proposal was almost all what was presented by the Rita Süßmuth commission and certain demands made by the conservative opposition parties. The proposal was not liberal but was an instrument to control, limit migration and also to regulate the residence of citizens from EU countries and other migrants. This law proposal was strongly criticised from refugee's organisations, human rights institution, churches and trade unions especially on the fact that the rights of asylum seekers were greatly limited and hinder integration.

Nothing was mentioned about the undocumented living in Germany. The government closed its eyes to a reality existing in its society. What an undocumented person said, "it is a German manner of approaching problems. To make as if it is not existing." Meanwhile the conservatives considered the law proposal as too weak and does not live up to the objectives to control and limit migration. Due to that, the Governor of the state of Hessen, Roland Koch (CDU) threatened to bring the topic as the next central topic for election. And Edmund Stoiber (CSU) said, "The proposal of the minister of the interior does not qualify an agreement. The proposal is to widen and to limit migration. That is a paradigm shift form. That counteract the main points that of Madam Merkel and me to control and limit migration."⁵²⁶

The Terror Attacks of the World Trade Centre September 2001: The "Securitization" of Migration

The attacks of the World Trade Centre and the Pentagon, made the German government suspend the entering into force of the migration law proposal. The government saw the need to add security packet in the migration law. The minister of the interior said, "The question of migration should be newly assessed from the 11th of September attacks." As an instrument to combat terrorism, the minister of the interior came up with a security

⁵²⁶ Interview with Edmund Stoiber. In: Die Welt, 06.09.2001.

packet. This security packet deals with the cancelling of advantages of rights religion associations have, which religious group or association activities will be closely watched and banned by the secret service police officers. The next step was the use of computer to search for wanted persons by accessing suspects to certain categories (Rasterfahndung).

The government considering this first security packet as too weak adopted a second security packet on the 14 of December 2001. In this packet, the functions or competence of the secret police, German criminal police and the border police officers were widened. This packet constitutes changes in the law to establish passports and identity cards. It carried stringent changes in laws concerning aliens, associations, asylum procedure and aliens central register.

According to this packet, the reasons to refuse residence permit were widened. One could be refused residence permit if it is seen that freedom, democracy, basic order or the German security are in danger. For instance, if it is proven that a foreigner is supporting a terrorist organisation. These reasons have made it possible for the widening of expulsion of a foreigner from Germany. This is the same with a refugee who according to the Geneva Convention could not be deported. He/she could be banished from the country when he/she endangers the security of the country or either belongs to or supports any international terrorist network or group.

In the law governing the asylum procedure, necessary measures have been taken to safeguard the identity of the asylum seekers, for instance recording of the voice in order to identify the region from which an asylum seeker originates. For up to ten years after someone sought asylum, the biometric data will be stored, for instance, finger prints. Due to the changes of the law of the aliens central register; security officers have easy access to information of foreigners.

The Upper House of parliament wanted to adopt this law on the 22 of March 2002. These security law proposals were welcomed from the conservative opposition parties, meanwhile the then minister of the interior, Otto Schily found it as a giant step of the era. Nevertheless, due to certain disagreement over other points concerning migration, for instance the age that a child is supposed to join the parents if the child is living out of Germany, the CDU presented a paper constituted of sixteen points in January 2002 of what they expected the migration law to look like. The main aspects were to limit and

control migration. Contrary to the recommendation from the then red- green government, the migration committee and the European Union to set an age of sixteen years that a child living out of Germany could join the parents already living in Germany, the conservative opposition parties CDU/CSU proposed ten years. All the parties agreed to improve the integration strategy of the migrants. Those who have migrated into Germany will be obliged to learn the language.

Publication of the Aliens' Residential Law 2005 (AufenthG)

After all the judicial and verbal debates to limit and exclude the migrants from Germany, the Lower House of Parliament adopted the migration law on the 9th of July 2004 and the law finally went into force on the 1st of January 2005.⁵²⁷

According to the new law-governing migrants, the number of residence titles that existed in Germany was trimmed from five to two. These two titles are limited and unlimited residence permit (befristete Aufenthalts und die Unbefristete Niederlassungserlaubnis). The recruitment treaty that was stopped in 1973 was maintained and no defined yearly quota of migrants to enter Germany was stipulated.

Migration is easy to researchers and specialists. This group will obtain unlimited labour permit on defined jobs. Germans and other EU citizens are privileged to have a job before any other citizen. Those who have independent functions and to prove that they can invest one million Euro or employ ten employees will be given residence permit after a strict examination of business idea they have. Foreign students who were expected to return home immediately after their studies do have the possibility from the migration law to search for a job in Germany for one year after they finish their university.

According to the law, migrants who newly migrated to Germany with the possibility to live in Germany are obliged to attend a language course known as integration course. This is known as an offer from the state. Any migrant who does not respect this offer will be threatened with a 10% cut of the social welfare services as well as the possibility to refuse the renewal of the residence permit.

⁵²⁷ Germany: Amicable Agreement to an aliens' Law. Netzwerk Migration in Europa e.V. (Eds.): Migration und Bevölkerung, Nr. 05/04, 2004.

In order to reduce the threats from International Terrorism, security measures have been taken against any body that intends to obtain a residence permit. According to Article 53 of the law, any one who organises illegal entry into the country will be immediately deported when the person is condemned to prison not on the basis of suspended sentence. Any body that preaches hatred, who is a terrorist, or politicians who have been condemned will be expelled from Germany. To be naturalised or to receive the unlimited residence permit, the office for the protection of the constitution have to answer certain questions concerning the criminal records of the person concerned.

The German alien law portray the different exclusion machinery in most aspects. Though it has improved on some aspects like the recognition of asylum seekers fleeing from non-state persecution, gender specific persecution, article 60 of the Alien Residential Law (§60 AufenthG), and has given the opportunity for students who have completed universities to search for a job for one year in Germany. Another positive aspect of the law is that it has destroyed the taboo surrounding the theme migration. It can be a giant step to future migration discussions, but in recent days this law falls short of addressing the aspects of Germany as a migration country. The law is widely designated to exclude migrants and asylum seekers. The topic of undocumented migrants has not been mentioned despite appeal from churches and charitable institutions to guarantee the minimum social standards to undocumented migrants. The law is to control illegal migration and those without residence permit from being part of the society.

Though the then minister of the interior Otto Schily described the law as a historical break through, the law in reality is an instrument to repel and expel with immediate effect the migrants. The rights of the migrants are restricted, family reunion made difficult and political participation almost impossible. This made one of the Trukish groups' representative, Bekir Alboga to reply by saying,

"I am deeply disappointed," said Bekir Alboga from the Turkish Directorate for Religious Affairs (DITIB) in an interview with *Spiegel Online*. "This is political duplicity and there is no point taking part in the summit." The reason for Alboga criticism was, "...directed at the new clause on spousal immigration, which states that a foreigner who wants to bring

his wife to Germany must be able to prove that she can earn her own living. Were a German national to bring a foreign wife to the country, this would not apply.”⁵²⁸

2. Access to Asylum Procedure in Germany

Germany is not new to asylum politics as is the case with Ukraine and Libya. There do already exist structures that can facilitate asylum seekers to request and later file in their claims for asylum. One of the main questions that will be treated in this work is how these structures function in reality. In Germany already there is an Asylum Procedure Act (asylverfahrensgesetz, AsylVerfG), which governs the asylum procedure. This Asylum Procedure Act states laws determining how asylum is sought, recognition or rejection and finally deportation of failed asylum seekers.

There is as well a defined body deciding asylum claims and this body is the Federal Office for Migration and the Recognition of Foreign Refugees (Bundesamt für Migration und Flüchtlinge, BAMFI). According to Article 60 of the Alien Residential Law (AufenthG), this body also prohibits deportation. The Federal Office also decides on the existence of deportation impediments, where asylum has been sought.⁵²⁹

This body is regarded as an independent body that is supposed to decide without influencing the claims of asylum seekers since this was the main purpose it was created.

2.1. Asylum Request

To file in an asylum claim, the asylum seeker has to first of all request for asylum at any administrative body or at the police station Article 19 of the German Law for Asylum Procedure or with the border police Article 18, I of Asylum Procedure Law, At this period, the person has not yet filed in an asylum claim. The police, Alien office or border police will immediately send the person to the Federal Office to file in officially for asylum. If it happens that at this stage the police makes an interview with the asylum seeker, this interview will immediately be conveyed to the Federal Office for the Recognition of Foreign Refugees as well. An asylum seeker from Cameroon said:

⁵²⁸ DW staff (jp): Muslim Groups Threaten to Boycott Integration Summit. 05.07.2007. Online: <http://www.dw-world.de/dw/article/0,2144,2670743,00.html> retrived on the 23. 02.08.

⁵²⁹ Article 60 of the Alien Residential Law (§ 60 AufenthG)

“I requested for asylum in Stuttgart but I was referred to Eisenhüttenstadt, in Stuttgart, my finger prints were taken, pictures were made of me, from left to right, right to left and a picture of passport size. As I was referred to Eisenhüttenstadt, I had to make a journey of about seven hundred kilometres where I finally filed in my asylum claims.”

I, the author of this work in 1997 also went through this similar procedure as I arrived Germany as an asylum seeker. I requested for asylum in Düsseldorf, but was later transferred to Eisenhüttenstadt where my asylum claim was listened. At this stage where I requested for asylum, my data was taken, name, fingerprints and passport photos as well. The main reason is as Griesbeck said, to begin the asylum procedure,

“The person will give his or her personal data, photos of the person will be made. The finger prints will be collected and quickly sent to the Federal criminal police office for investigation that the person does not misuse asylum by demanding it several times.”⁵³⁰

There are certain conditions that can make either the Border Guards, police or Alien Office to refuse a foreign refugee from entering after the request for asylum. If it is discovered that he or she already sought for protection from persecution elsewhere in a country consider to be safe and democratic, he came into Germany through a safe third country or if the person is a danger to the state of Germany. That means either he or she has been condemned by a court for a crime for at least three years imprisonment.

2.2. Asylum Application

According to Article 14 of the German Asylum Procedure Law, it is only at the branch Office of the Federal Office for the Recognition of Foreign Refugees that asylum claims could be filed. The person-seeking asylum is supposed to do that personally. Asylum applications can be made either oral or written or when the person portrays that he or she needs protection from being deported to his or her country that threatens his or her life.

Meanwhile Article 12 III of the German Asylum Procedure Law states, only persons of at least 16 year old can file in an asylum claim. In such a case if there is no guardian to

⁵³⁰ Griesbeck Michael: Asyl für politisch Verfolgte und die Eindämmung von Asylrechtsmißbrauch. In: Aus Politik und Zeitgeschichte, B46/97, 1997.

take charge of this person, the Guardian court will appoint a guardian. This has not usually been the case, there are many minors who filed in for asylum in Germany but the Federal Office without any evidence, working on conspiracy theory, refused to recognise the fact that they are minors. It is only after about three years that the court condemned this act of the branch office of the Federal Office of Eisenhüttenstadt in the state of Brandenburg as illegitimate. Even with that decision from the court, the minor still lives alone in an asylum camp in Birkengrund Ludwigsfelde in the state of Brandenburg. This minor said;

„The branch office of the Federal Office in the state of Brandenburg, based in Eisenhüttenstadt refused to recognise the fact that I am a minor and I was transferred to Birkengrund Ludwigsfelde where I lived with other adults, no guardian. After about three years, the court found the decision of the Federal office unjust and illegal. I feel frustrated because German offices do not challenge the other but on the contrary protect one another.”⁵³¹

⁵³¹ A Cameroonian minor who sought asylum and the Federal Office without any evidence refused his age as a minor. He is in the asylum camp at Birkengrund Ludwigsfelde. This interview was conducted on the 10th of January 2007 in Ludwigsfelde.

Fig. 15 Number of Asylum seekers in Germany

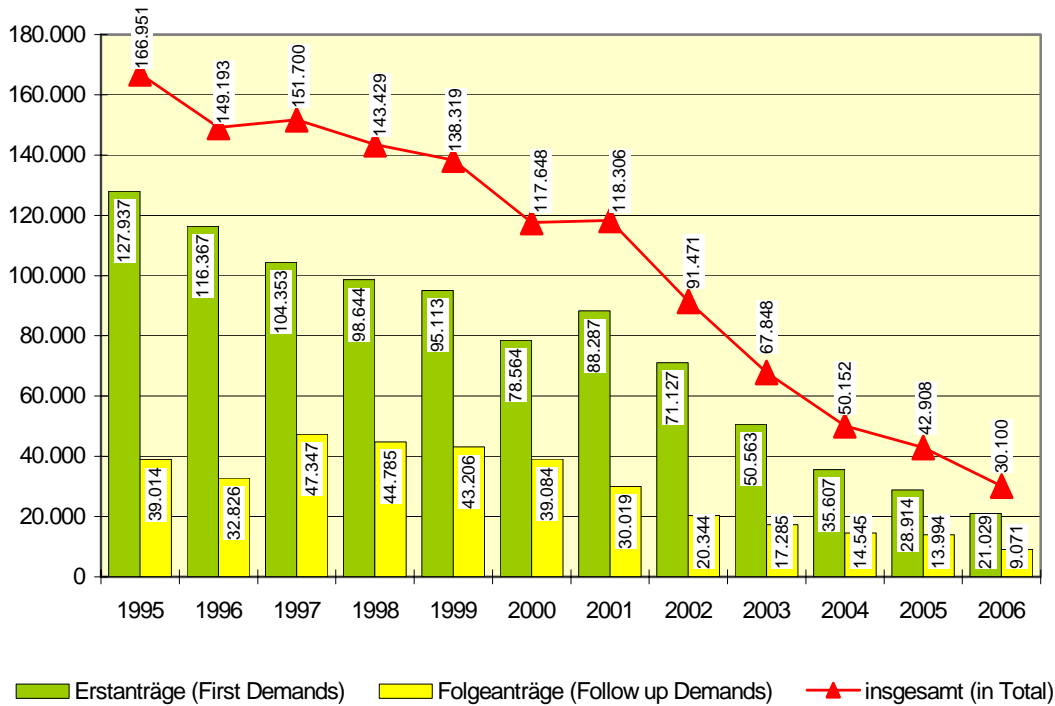
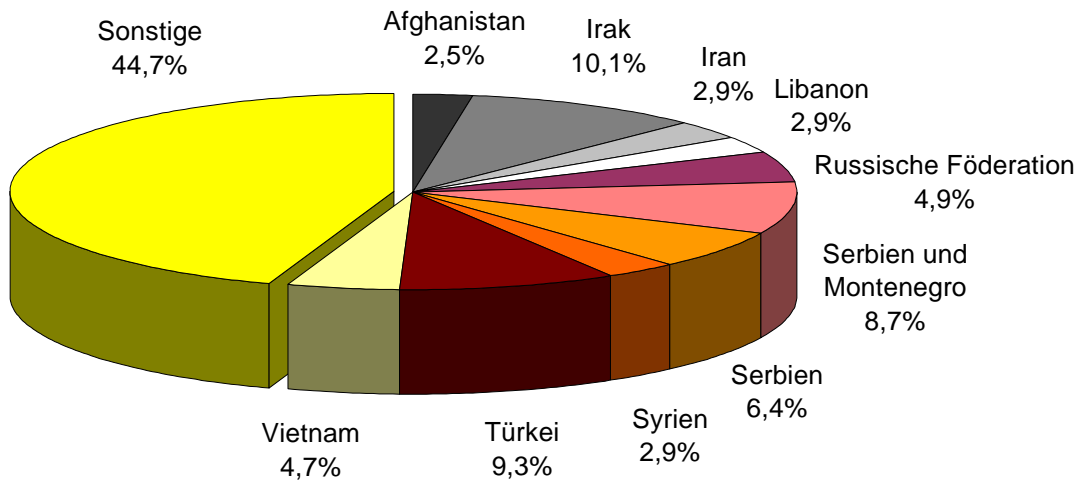


Fig. 16 Total number of asylum application in Germany in 2006: 21.029



Source 15-16: Bundesamt für Migration und Flüchtlinge (German Federal Office of Migration and Asylum): Asyl in Zahlen 2006. Stand 31 December 2006.

2.3. Counselling before Asylum Claims

In most of the asylum reception centres in Germany, the provision for asylum seekers to be counselled is lacking. The asylum seekers meet an asylum authority totally ignorant

of what the whole asylum procedure is in Germany. In Blankenburg, in the state of Niedersachsen or Lower Saxony, for example Patrick, one of the asylum seekers living in the camp said:

“There is no counselling here. It is strange when you mention such a thing to us. We do not know such rights to obtain counselling before filing our asylum claims. We do not meet any lawyer, just as we do not meet any official to inform us on what asylum is all about in Germany. We make our interviews as laymen and women. Who knows? It may be that is part of the reasons why our asylum claims are usually rejected.”⁵³²

The issue of counselling is made more difficult because many asylum seekers do not usually have documents they used to enter the country. Without legal documents, they are considered as irregular migrants. This prohibits them from going to official counsellors to find out information about German asylum system. The reason is that the provision of the German Aliens Residential Law (Aufenthaltsgesetz) concerning irregular migrants, expects their “Denunciation” by any member of an official board.⁵³³ Here the official has to pass any data regarding individuals without residence permit to the relevant section of the ministry of the interior without being asked. In case an irregular person seeks the help of a Social Welfare Administration, he or she should be denounced. Due to this denunciation, irregular migrants are afraid to approach the official counsellors trained for the service.

Article 96, which refer to “smuggling of foreigners states clearly that anyone that helps people without documents can be punished.”⁵³⁴ In relation to this article, many asylum seekers seek asylum without understanding the society and the cultural specifics of Germany. Many officials are afraid to be met with somebody without documents because it will be considered as if he or she smuggled the person into the country. This failure of being counselled makes it difficult for asylum seekers to be credible in the eyes of the interviewers. Many of them speak using their cultural behaviours that are quite different from that of Germany. Therefore a high rate of rejections has been common for years.

⁵³² Interview with Patrick, a Cameroonian living in the asylum camp in Blankenburg, Lower Saxony. Conducted on the 15th of December 2006 in Blankenburg.

⁵³³ Article 87 of the Aliens Residential Law (§ 87 AufenthG)

⁵³⁴ Article 96 of the Aliens Residential Law (§ 96 AufenthG)

2.4. Asylum at Airport

Asylum at the airport is usually for asylum seekers who have not yet entered the country or what is usually known as the migration zone. Anybody who files in at the airport without having entered the migration zone will be processed there.

“In practice, the airport procedure will often have already begun in the airplane. The Federal Border Guard (Bundesgrenzschutz, BGS) makes “preliminary controls” directly in the airplane while it is still on the runway, if it is a so-called “plane relevant for refugees”. The arriving persons are subject to a first control, and are sometimes not even allowed to leave the plane...”⁵³⁵

If in course of such controls it is found out that some of the passengers of the plane are asylum seekers, they will be subjected to questioning by the Federal Border Guards. The first thing to be done is to collect the personal data of the asylum seeker, then followed by fingerprints and photos. With the assistance of a translator, the border guards will start an interview. The question the Border Guards frequently pose is on the route the person used in entering the German territory. The aim behind is to see if the person went through a state considered to be a “safe third country” in order to reject the asylum claims. The argument behind this strategy is strengthened with the revision of the German Constitution in 1993, it became almost impossible for asylum seekers to enter Germany without passing through another so called “safe third country” since Germany is surrounded by other European and EU states considered to be safe.

According to the German Constitution Article 16 a II, Anybody who passes through a safe third country cannot savour the right of asylum. It is considered that the other states neighbouring Germany fulfil the basic democratic standards and security capable of protecting asylum seekers the same as the state of Germany does. In such a situation, it is deduced that the prime issue to seek asylum for security is treated very trivial in Germany. What is usually in the minds of the German Border Guards is to facilitate the deportation of asylum seekers than to protect them.

⁵³⁵ Heinhold Hubert: Legal Hand Book for Refugees. Karlsruhe 2000, p. 20.

In course of the questioning, if the Border Guards discover that an asylum seeker passed through a safe third country where he or she could be protected from persecution, the asylum seeker will be refused entry. If the Border Guards realised that an asylum seeker could not enter because of one or the other mentioned reasons, they will be kept in a defined living quarters on the airport premises where they are not supposed to go beyond the fence. They are practically imprisoned though the government argues that they are not because they have the possibility to go to a different country apart from Germany. The other reasons the government, can pose for keeping the asylum seekers at the airport prison apart from the safe third country is when the third safe country refuses to receive the person, or if it is difficult to identify the person for deportation or because their return to third country is impossible due to technical reasons.

At the airport procedure, the Federal Office for the Recognition of Refugees conducts the interview with the asylum seeker but it is the German Border Guards that decides if the asylum seeker should be allowed to enter the country or not. Before the interview at the airport, there is no obligation for the German Border Guards to provide the asylum seeker with a lawyer though actually it would have been better for the asylum seeker to take up a legal counsellor who can either counsel he or she before the official interview. The asylum seeker as approved by the German Federal Constitutional Court can have access to a lawyer only when the airport interview has taken place.

If it happens that the asylum seeker's claims are rejected as a manifestly unfounded claim, the airport branch office of the Federal Office for the Recognition of Refugees notifies the asylum seeker with the decision and at the same time with a decision notifying deportation which should be carried immediately and at the same time with a notification of prohibition to enter the German territory.

On the contrary, if the claim of the asylum seeker is not a manifestly unfounded one, or that a decision has not been taken and will not be able to reach on the case within a short time because some investigations have to be made, the Border Guards will be informed and if a decision is not reached in the space of forty eight hours, the Border Guards will allow the applicant to enter the country.

In case an asylum seeker arrives from a safe third country and the applicant is not conveyed by the Border Guards to the Federal Office for the Recognition of Refugees to

file in the asylum claims, the applicant can file a “swift motion against the Federal Republic of Germany. The main aim of the motion is for the refugee or asylum seeker to have the right to be heard by the branch office of the Federal Office and to prevent deportation.

Retention at the Airport

Retention is a terminology different from detention. In this case, retention is a situation where a person is held at the airport, seaport or terrestrial border premises at a non – migration zone by the border guards. Though the person has already crossed the free zone according to international law and is on the territory of the country of asylum, it is still considered that the person has not yet set foot on the migration zone and logically not yet entered the country of destination. At this stage, the person is not allowed to come into the country but kept at the border police section of the port of entry. It is considered that the person is not detained because he or she has the opportunity to return to the country of origin or to another country but not to enter the German main territory.

Retention occurs after a person has filed in an asylum claim and it has not been accepted. The border guards keep the person at the airport with the fears that if the person is allowed to enter the country, he or she can disappear and it will be difficult to find the person for deportation. It is argued that at that time of retention, the individual is solely depending on the government on accommodation, and other social facilities. The government prefers this for a temporary period than to allow a situation where the person can become a permanent burden on the state. In principle, according to the German asylum law, an individual has a limited period to spend at the airport premises. This defined duration is due to the asylum procedure and it is 19 days. “Two days for the decision of the Federal Office for the Recognition of Foreign Refugees, three days for the asylum seeker to seek legal remedy at court for being access to German territory, plus 14 days for the courts decision.”⁵³⁶

⁵³⁶ Bank, Roland: Reception Conditions for asylum Seekers in Europe: An Analysis of Provisions in Austria, Belgium, France, Germany and the United Kingdom. In: Nordic Journal of International Law Vol. 69, No. 3, 257-288, 2000, p.262.

If an asylum seeker's claim is recognised by the court, the individual is allowed access into the country but in a situation where the asylum applicant obtains a negative answer from the court, the applicant is refused entry into the country. The border guard will deport the asylum applicant. In a situation where deportation proves difficult because the asylum seeker is afraid of persecution back in his home country, the individual will be kept for months at the port premises. "For instance, an Algerian asylum seeker who has not been admitted to the territory but who also was refused return by the Algerian authorities (claiming he was not Algerian but Moroccan) spent about eight months in the transit area of Frankfurt airport. Courts have since ruled that retention of rejected asylum seeker in the airport zone beyond 19 days is unconstitutional."⁵³⁷

As a reaction to the decision of the court, if an individual is rejected at the airport procedure, the individual can either go back or stay at the airport premises at his or her discretion. It is also possible to have a judicial order to detain the asylum applicant.

3. The Socio-Economic Conditions in Asylum Camps

"Asylum seekers, unrecognised refugees and people with tolerated stay are brought into asylum camps in Germany."⁵³⁸ This part is focused on the main forms of exclusion and externalisation faced by asylum seekers in Germany in areas relating to housing, health, education, work, shopping system and lack of freedom of movement. As a direct consequence, there is the failure of the mainstream public services to meet and reflect the needs and interests of the asylum seekers. A direct reaction is discrimination in the public and private sectors.

3.1. Accommodation

This part describes in detail the life of asylum seekers in different asylum homes. The size of the living space asylum seekers are accorded in asylum homes, the kitchen, how and where it is located, the situation faced by asylum seekers to use the kitchen, the play ground/ room for children. The system and types of control are examined and the different types of control on the asylum seekers. The position of women and children in

⁵³⁷ Bank 2000, p. 378.

⁵³⁸ Pieper Tobias: Die Lebensrealität von Flüchtlingen in der BRD - Anwendungsmöglichkeiten der Kategorien Bourdieus. In: Hertzfeldt Hella/ Schäfgen Katrin (Eds.): Kultur, Macht, Politik. Perspektiven einer Kritischen Wissenschaft. Zweites Doktorandenseminar der Rosa-Luxemburg-Stiftung, Oktober 2003, pp.63-78, p. 63.

asylum homes. The environment where the asylum seekers are usually dispersed and the effect of the dispersion on asylum seekers. This can be seen from the assessment made by some asylum seekers. This section of accommodation vividly describes the specific aspects in different asylum homes.

The branch of the Federal Office decides accommodation for an asylum seeker for the Recognition of Refugees in the federal state in which the asylum seekers are found. Pursuant to Article 47 of the law governing the asylum procedure (AsylVfG), asylum seekers are supposed to live in this centre for up to six weeks and at most three months.⁵³⁹ In Brandenburg, at times asylum seekers stay longer than three months in the reception centre. The reason is that in relation to Article 53 of the law governing the asylum seekers procedure, an asylum seeker has to be brought after this period of time into a collective accommodation. For the authorities, one part of the reception centre is considered a collective accommodation. In reference to this argument, an asylum seeker can stay for a longer period in a reception centre. The dispersion and housing of asylum seekers regulated by a branch of the Federal Office for the Recognition of Foreign Refugees can be found in the following Articles of the law governing the procedure of asylum seeking, Articles 44 – 54 (AsylVfG). According to Article 50 of this law, the foreigner is to be dispersed within the Federal state in which a branch of the Federal office for the Recognition of Refugees is found (Außenstelle). This means that asylum seekers do not decide where to live.

“To move to a different city or community can be possible under defined conditions. At this juncture, the person has to apply at the government of the jurisdiction he or she is found. And for this movement to be possible, the person has to have very convincing reasons. A right to such movement can be possible in cases of bringing the family together, husband/ wife or children under eighteen years of age.”⁵⁴⁰

More reasons to be accepted to move are when somebody has to be closer to a particular medical doctor because of the need of urgent special treatment, isolation with

⁵³⁹ Article 47 of the law governing the asylum procedure (§ 47 Asylverfahrensgesetz), 1993, revised in 2007.

⁵⁴⁰ Förderverein Niedersächsischer Flüchtlingsrat e.V. (Eds.): Flüchtlingsrat, Zeitschrift für Flüchtlingspolitik in Niedersachsen. Leitfaden für Flüchtlinge. Heft 66, Hildesheim Februar 2000.

an attestation that needs a support from a medical doctor, or psychologically ill. This movement is only possible when the new district is obliged by law or convinced with the reason of the transfer. There are other reasons like public interests, such as security, costs and general shortage of housing or if there is a positive decision taken on the asylum claim of an individual or if a protection against expulsion has been reached.

It is to the discretion of the Federal states and the territorial jurisdictions⁵⁴¹ to decide what type of accommodation an asylum seeker can have. The right to choose a location is very limited for an asylum applicant, if the police or the border guards do not oblige the applicant. In a case like this, the Reception Centre where the applicant presents his or her self will accept the individual provided there is a space within the required number to be taken by the state (Land) and if the branch office of the Reception Centre deals with cases from the particular country this applicant is coming.⁵⁴² After the reception centre, the asylum seekers are usually dispersed to a collective home (Gemeinschaftsunterkunft). In Brandenburg as in the other states of Germany, the asylum seekers are mostly kept in isolation in the forests, in containers, former military camps or in industrial zones. Examples, of those living in containers are found in Neu-Seeland and "Kunersdorf"⁵⁴³. Examples of those living in forests and former military camps, Hohenleipisch, Waldsieversdorf, Kunersdorf, Perleberg and Bahnsdorf. The conditions of living in these isolated places are very sub- standard. This sub- standard way of life is stipulated in the state's internal rules and regulations stating the minimum standards of living for asylum seekers.

⁵⁴¹ Territorial jurisdictions are the different districts the asylum seekers are living in, in a state.

⁵⁴² Article 46 para. 1 of the law governing the asylum procedure (§ 46 para.1 Asylverfahrensgesetz), 1993, revised in 2007.

⁵⁴³ Some of the camps have been closed down. Camps like, Kunersdorf in March 2005, Guben was closed in June 2006, Neustadt/Dosse, Crussow was closed in September 2005, Waldsieversdorf in December 2006, Waßmannsdorf was also closed. This information was got from the Flüchtlingsrat Brandenburg (Refugee Counselling Centre Brandenburg) on the 24th of October 2007. Some of these camps were closed and transferred to other horrible parts. Why this information is still valid is because the other 21 asylum camps left in Brandenburg have the very conditions like the camps either closed or transferred. Just to mention some that have not been closed, Garzau, Hohenleipisch, Forst, Perleberg and the other camps mentioned in this work.

According to the internal regulations of the minimum standards of living of this state, the asylum seekers are to have at least a space of 6m² in a communal room with others.⁵⁴⁴ This means an asylum seeker is entitled to a space in a room and not a room. This regulation has further consequences: An asylum seeker living in an asylum home cannot sign a contract to rent an apartment. They are refused the right to sign a contract with landlords or housing department. The social welfare office does this service.



Fig. 17-20 The Asylum Home in Perleberg, State of Brandenburg, 2007

Source: Photos Christopher Nsoh

In the above photos, one can see the asylum seekers trekking to their asylum home in Perleberg, the kitchen used by many as already mentioned and the surrounding with

⁵⁴⁴ Runderlaß des MASGF vom 27. August 1999, Amtsblatt für Brandenburg Nr. 41 vom 13. Oktober 1999: Mindestbedingungen für den Betrieb von Gemeinschaftsunterkünften und die soziale Betreuung (according to the Minimum standards of the services of collective housing situation and social services), section 1.1.(1), according to article 2, paragraph 1(2) Erstattungsverordnung zum Landesaufnahmegesetz.

warning shields of land mines since this home used to be a military camp in the days of the Soviet Union.

Living Space

A room of about 26 m² is expected to be shared by four people. In Rathenow, Waßmannsdorf, Guben, Perleberg, Neu-Seeland, Kunersdorf and most of the homes in Brandenburg, this minimum measurement is not provided to the asylum seekers. The space accorded to them is smaller than 6 m² per person.

In most cases, a small table is standing at the middle of the room in the middle of bunk-beds. According to the internal rules of Brandenburg's minimum standards for asylum seekers, each person is to have a small space on the table with a chair per person.⁵⁴⁵ This means there is no right to have and own a table. At one corner of the room the smallest size of commercial available fridge is standing for four or six people. In the asylum home in Fürstenwalde/Spree, this smallest size of the fridge is allocated for seven people. This method of caging the asylum seekers in one room always sparks off conflicts between the roommates. There is no privacy. At times Conflicts arise because people from different cultural and intellectual backgrounds are packed together.

There are no house telephones at asylum homes because asylum seekers are not allowed to install landlines. Most of the large families in independent apartments have landlines since nobody controls the apartments. For those still in the asylum homes, the reason that most if not all is always seen carrying mobile telephones is as said, are prohibited from installing land lines. In the modern asylum homes, there is usually one telephone booth at the corridor to serve about two hundred people. It is constantly overcrowded. Many people do not use the phone to receive their messages because a family member could be calling at a time that somebody from a different country who does not speak the language picks up the phone.

Receiving visitors is very difficult. Asylum seekers have to ask roommates to leave the room to make room for their visitors. External visitors can visit only until 10 p.m. In some of the homes, external visitors are not supposed to pass a night. Meanwhile in other homes, for visitors to pass a night, asylum seekers are expected to pay 4 to 5 € to home

⁵⁴⁵ Runderlaß des MASGF vom 27. August 1999.

administrators. This is not a law but the different home administrators use their discretion to create internal rules for each asylum home. Examples can be seen in Neu-Seeland, Ludwigsfelde, Luckenwalde, Fürstenwalde, and Rathenow.

Kitchen

There are homes like Rathenow, and Cottbus, that have a kitchenette or a part to cook in the rooms for three or four people, meanwhile others like Waldsiefersdorf, Waßmannsdorf, the city of Brandenburg, Perleberg, Prenzlau, Hennigsdorf, Luckenwalde, have collective kitchens for more than 30 asylum seekers. In Guben, over sixty asylum seekers are using four cookers in a general kitchen. Meanwhile, in Kunersdorf about two hundred asylum seekers are using twelve cookers. According to the asylum directives of the minimum standards of living for asylum seekers in Brandenburg, Section 1.1. (9)⁵⁴⁶, The minimum standards to cook are for three persons to share a hotplate.

These minimum conditions are hardly respected in almost all the homes in the state of Brandenburg. From four to about ten people use a hotplate averagely. There is always very little space for the people to stand and cook. They usually squeeze themselves in the kitchen or kitchenette. The space between the taps and the hotplates are usually closely together in a manner that it is cumbersome for the roommates to do something together, like to clean and work at the same time. The law governing the asylum procedure in Germany is not precise. That is why each state is acting in a unilateral manner. There is no defined standard given to the states to be respected.

In some of the homes, the kitchens are very far away from the rooms. In most homes the distance is about twenty-five metres away from the rooms. This means somebody has to carry the pots, and other cooking tools for fifty metres to the kitchen and back before eating cooked food. In Kunersdorf, some of the asylum seekers cover a distance of about one hundred and fifty metres to and from the kitchen since there is only one kitchen for about two hundred asylum seekers. With the common kitchen, it is most of the time very unhygienic, some of the asylum seekers cook and do not keep the place and the cooker clean. A further point of conflict arises when different people from different nationalities are cooking their traditional food. The smell irritates the other and

⁵⁴⁶ Runderlaß des MASGF vom 27. August 1999.

this generates problems. This poor accommodation could also be seen in the detention centre at Harmondsworth in Great Britain. The detainees wrote an appeal in which they stated:

“The most alarming problem facing the detainees is their susceptibility to a hazardous and unhealthy environment as every single window in all the rooms in the various wings are sealed. Communicable diseases are therefore likely to be transferred from one detainee to another. The rooms most times are always very hot and uncomfortable, although we don't however expect to have comfort in "advance slavery". We are not breathing normally and are usually very weak. We are gradually suffocating to death. What a degrading condition. The available facilities, specifically the central air conditioning systems, are not functioning; they are only hanging on the ceilings like decorative frames. You can imagine a facility designed to save the windowless nature of the building not functioning for months and people (glorified neglected human beings) are locked in here. This is indisputably barbaric. This only brings to our memory the slavery era of our great ancestors.”⁵⁴⁷

3.2. Problems Faced by Women and Children

Women and children are mostly left alone in asylum homes. In most cases, the women have the sole responsibility to bring up their children and to take general care. There are usually minors living without their parents in asylum homes of adults. Apart from the general bad conditions of the homes suffered by everyone, the children and youths face permanent conflict with the adults. They find themselves in strange cultural values they have never experienced. This is as well true with the women who are mostly the minority. Some are sexually abused and are vulnerable in many other ways. Women living with others have no privacy. For instance, in times of menstruation, others get to know. In Kunersdorf and Luckenwalde for example, the women use the same bathroom with the men. The bathroom has five rusted showers is situated in the basement. In Luckenwalde, the people see one another while bathing. Marceline Ngum in this asylum

⁵⁴⁷ Statement of 61 detainees at Harmondsworth: Detainees protest following the suicide of Bereket Yohannes in Hammonsworth. 2006-01-20. This information was got from <http://www.barbedwirebritain.org.uk/articles/2006/jan/002.shtml> . Barbed Wire Britain is an organisation struggling to end migrants and refugees detention in Great Britain. It was accessed on the 17 of November 2007.

home informed the commissioner of integration in the state of Brandenburg Mrs. Karin Weiße who promised to intervene but until date, the same practise is going on.

Due to the fact that children go to school until the tenth grade, they usually learn the language faster and better than their parents. It is always very difficult for the children at home because there is nobody to correct their language mistakes since the parents do not have the opportunity to learn the German language. Thus being forced to live in an environment where German is not known or where it is spoken poorly undermines all that the children learn in school. Additionally, children often act as translators between the social workers and their parents or for people from their cultural background. In this process, children are privy to frightful issues concerning their parent's asylum claims. This de facto responsibility to understand the information and then to inform their parents of such messages often has dire psychological effects on the children. For instance, children often learn about problems not previously known to them, such as deportation. In Rathenow, children below the age of eighteen are not allowed to visit the asylum home, even though there are children below eighteen years of age living in this home. This means the contact between children and their schoolmates is not possible in the asylum home.

In most of the homes, there is no room for the children to play. In Cottbus, Waßmannsdorf, Forst, Neu-Seeland, Perleberg, Rathenow and others. A playroom for children, relieves the tension among them. A daily relief is possible between parents and children in a home where there is a room for the parents to play with their children because there is almost no space in the living rooms. These extra rooms could be used to solve conflicts arising between parents and children. For children between the ages of seven and fourteen, it is a little different situation since they can play outdoors. Their parents can allow them to go out without fear of an incident. But during winter, it is impossible. During school period, when the children come home from school, they do not usually have enough space to do their homework. In case of an extra room, they could withdraw from their small living rooms and do their homework in the extra room.

In most of the homes, there is no common room where the asylum seekers could meet and share cultural values and watch television. Since private institutions administer most of these homes, they do not respect the already worse minimum directives made by the state. In order for these institutions to make a lot of profit from running the asylum homes, they turn to reduce drastically provisions to asylum seekers. In some of these

homes where these rooms are found, either they are too small or the house administrators always prevent asylum seekers from having access to these rooms. An example was in Fürstenwalde/Spree where the home administrator refused to open the door to the asylum seekers to have a seminar on the new provisions of the law regulating the asylum procedure found in the new immigration law proposals. This attitude prohibits asylum seekers from having their leisure and independence. The house authority must know every activity they want to carry on. A macabre form of control that is denounced by all the asylum seekers.

3.3. Control in Homes

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”⁵⁴⁸

Asylum seekers are permanently being controlled either by the home administrators⁵⁴⁹, the housemasters⁵⁵⁰ or the social workers. Asylum seekers do not have any privacy. It is a common practise of the social workers, house administrators and housemasters to enter rooms using the master key at any time unannounced. For instance, an asylum seeker in Birkengrund Süd in Ludwigsfelde said, “the workers always enter their rooms without knocking with the excuse to check if the rooms are well made up.

The guards at the entrance are aggressive to our visitors. They scare the few Germans who have interest in us thereby reinforcing the ideology of isolation already created by the German government. If a visitor wants to pass a night in the home, we are asked to pay 4 €⁵⁵¹ He asked, “If this is our apartment, why do we have to pay money to receive our visitors?”⁵⁵² To the house administrators, the visitors consume electricity, water and other facilities, which the asylum seekers have to pay. Allocations are not made to allow visitors to sleep in asylum homes. If visitors want to sleep overnight, asylum seekers are expected to pay extra.

⁵⁴⁸ Article 12 of the Universal Declaration of Human Rights, 1948

⁵⁴⁹ People doing the administrative work at each asylum home

⁵⁵⁰ People doing technical work and some light repairs at asylum homes

⁵⁵¹ Interview with Ndingi in Birkengrund, an asylum seeker living in an asylum home in Birkengrund in Ludwigsfelde, state of Brandenburg, 03.06.2004

⁵⁵² Interview with Ndingi, an asylum seeker living in an asylum home in Birkengrund in Ludwigsfelde, state of Brandenburg, 03.06.2004 in Birkengrund

In Hennigsdorf, asylum seekers complain about the incessant search of their rooms. Hervais Tazo, an asylum seeker living in Hennigsdorf, met three officials in his room as they were searching the room and also saw the home administrator coming out from the room of other asylum seekers.

In Rathenow, asylum seekers are often complaining that officials of the home always enter their rooms unannounced and open their letters. Numerous cases of disrespectful intrusions on asylum seekers privacy are asserted. For example, Mrs Pagel, the home mistress in Rathenow and two social workers, Mrs Schutz and Mrs. Krause are known to have gone into the room of Thomas, a former asylum seeker, while he was lying with his girlfriend in bed. Substantiating the intrusive behaviour of the house administrator, another former asylum seeker from Togo known as Appolinaire complained how one of his letters was opened and when he asked Mrs. Pargel, she claimed the letter was opened at the post office. Appolinaire went to the post office to find out if the post office of Rathenow opened his letter. In the post office, he was informed that if his letter was opened there, there is usually a special sign that the post office indicates. Meanwhile there are many other asylum seekers in Rathenow who insist that these home workers entered their rooms. Due to these accusations, there is a court case going on in Rathenow against the asylum seeker. The next appointments of the case in court are on the 21st, 23rd and 26th of September 2004. Intrusion into somebody's private life is a crime in German criminal code under certain conditions, which is punished under paragraphs 123, 201, 202 and 203 of the penal code (StGB).

In Cottbus, the asylum seekers complained that the workers always enter their rooms without their consent. For instance, Winifred a female asylum seeker complained how the housemaster rushed into her room and found her naked. In Guben, Charles, an asylum seeker gave two instances where his room was entered. In one of the instances, it was the social welfare office workers who entered the room without knocking and met him inside as they were carrying on their monthly control and the other instance is when he found his trash can that was standing outside by the door post in his room.

At the entrance of some homes, there are security cameras that control the exits and entrances of asylum seekers and visitors. Examples are Hennigsdorf, Rathenow Kunersdorf and Luckenwalde. There is also the system of monthly control with a presence list to indicate which asylum seekers spend their times at the home and which

do not. In Guben for example, the home administrator sent an SMS message to one of the asylum seekers in which he said, "Hallo Charly! Morgen 11.05; 8.00-12.00 Uhr wieder große Kontrolle Sozialamt (CHEF) Wer nicht da ist = keine Sozialhilfe mehr und Asyl fertig, du mußt kommen!". (Hello Charles! Tomorrow the 11.05, at 8 a.m. to 12 p.m., there will be another big control from the social welfare office (chief). Whoever is not present will not receive any social welfare assistance and the asylum claim will be brought to an end, you must come!).⁵⁵³ Reverting to the SMS from the house administrator, it gives the impression that success at asylum application depends on one's presence at the home, rather than on facts presented by the applicant during the interview at the branch of the Federal Office for the Recognition of Foreign Refugees. This hazardous control system can be found in the Harmondsworth detention centre as found in a letter written by detainees in this centre describing their poor condition. This letter was written after one of the detainees committed suicide. In it is said:

"Freedom of movement is totally ruled out and every outlet leading to various association areas like gymnasium, education and worship centres are permanently locked against easy access to the user of the facilities they are in. UKDS officers make us feel that we are an inconvenience and our timely movement is only at the disposal of the authority."⁵⁵⁴

3.4. The Prevention of Integration

"We are completely isolated. It is difficult for us to come in contact with Germans and the general public. Most of the Germans do not know our problems because we usually live at the outskirts of the cities, either in the forests or in isolated industrial zones. In this isolation, the birds and animals are more our companions rather than the Germans and the general public."⁵⁵⁵ Jean Claude is an asylum seeker based in one of the dilapidated asylum homes in Potsdam, in Lerchenstieg. He is a member of the Flüchtlingsinitiative Brandenburg which is fighting for the self organisation of asylum seekers, better living

⁵⁵³ Copied from the mobile telephone of Charlie, 10.06.2004. Charlie is an asylum seeker in the asylum home in Guben.

⁵⁵⁴ This information was got from Barbed Wire Britain's Website: <http://www.barbedwirebritain.org.uk/articles/2006/jan/002.shtml> . It was accessed on the 17 of November 2007.

⁵⁵⁵ Interview with Jean Claude in Potsdam, member of the initiative of asylum seekers in Brandenburg (Flüchtlingsinitiative Brandenburg, FIB), 14.06.2004

conditions for asylum seekers in Brandenburg and against the different forms of racism the asylum seekers, refugees and other migrants in Brandenburg face daily. Most of the asylum homes are mostly found at the remote outskirts of cities, situated in difficult to reach locations. Due to these isolated camps in Germany, Tobias Pieper qualifies the intention as, “the objective of the refugee camps is the solid application of control and administrative administration of people on flight found in Germany and the institutional exclusion from the society.”⁵⁵⁶

To visit most of the asylum homes, one has to walk for a very long distance. For instance, to go to Waldsiedersdorf in the district of Märkisch-Oderland, one has to go by foot for at least three kilometres. At the main gate of the home after a three-kilometre walk, is a placard, which states, “It is prohibited to enter, there is a risk of death.” Behind this placard, one is visually assaulted with a gigantic abandoned ex-military camp, shattered buildings and destroyed windowpanes. One of the windows is painted roughly, void of fancy and respect for the asylum seekers. On the roof of the corridor are large pipes. In the toilet, pipes are rusted and drip water.

The asylum seekers in this home do their shopping in Seelow, which is more than fifteen kilometres away. They must walk for three kilometres to the closest bus station, which takes them to the village Munchenberg, after which they must take a regional express train to Seelow. To return, they must make the same transportation connections ending with the bus depositing them three kilometres from their asylum home. As no public transportation is found in this area they must manage the remaining three kilometres on foot, loaded down with their shopping. The asylum seekers receive 40 € per month as cash and the rest smart cards. To go to Seelow and back is 6 €. Because of the long distance they have to make by foot, they are forced to do shopping four times a month instead of once a day. If one multiplies four by six, it means that almost all of the 40 € is used for transportation costs alone. To further complicate the transportation issues, the aliens offices or social welfare offices are mostly located in far away areas or in different cities. For example, the aliens’ office responsible for the asylum home in Waldsiedersdorf is based in Strausberg, near Berlin. Meanwhile the social welfare office is in Seelow.

⁵⁵⁶ Pieper Tobias: Das dezentrale Lagersystem für Flüchtlinge. Eine analytische Einordnung. In: interface (Engelschall Titus/ Hahn Jetti/ Pieper Tobias/ Züllich Tim) (Eds.): WiderstandsBewegungen. Antirassismus zwischen Alltag & Aktion. Berlin/ Hamburg: Assoziation A 2005, p.133-145, p. 134.

When the asylum seekers have to go to and from the alien office, transportation costs are excessive considering their 40€ monthly allowance. This is the situation in most of the homes in Brandenburg.

In Waldsiedersdorf, a female social worker working with the institution taking care of the home said, Sozialpark MOL e.V. is the institution taking care of the asylum home. She further said, “

The life here is very difficult for the asylum seekers. They have to walk for three good kilometres to meet the bus no matter where ever they want to go.”⁵⁵⁷ Concerning the poor state of the home, she asked, “ Have you ever been to the other home in Kunersdorf in this very district? I have not been there myself but I heard it is worse than here.”⁵⁵⁸ Nevertheless, she concluded that, “We wish that the people should have a normal life. We can understand it is very difficult but we do our best to make them happy.”⁵⁵⁹ This asylum home in Waldsiedersdorf was transferred to Garzau where the conditions are almost the same.

For the development of a child, she thinks it is necessary for the asylum homes to have playgrounds and rooms for children.

The other home where the home administrator and a social worker assessed the prevention of integration is the asylum home in Perleberg. The home administrators have contacted the officials in the city to pave a shorter way that the asylum seekers could use to go to the city. There is no bus route to the asylum home and no other means of transportation. Concerning the isolation of the home in the forest, the home administrator and the social worker see it as an advantage on two counts,

⁵⁵⁷ Interview with a female social worker in the asylum home in Waldsiedersdorf, Brandenburg, under Sozialpark MOL e.V., 14.06.2004

⁵⁵⁸ Interview with a female social worker in the asylum home in Waldsiedersdorf, Brandenburg, under Sozialpark MOL e.V., 14.06.2004

⁵⁵⁹ Interview in Waldsiedersdorf with a female social worker in the asylum home in Waldsiedersdorf, Brandenburg, under Sozialpark MOL e.V., 14.06.2004

“Firstly, the asylum seekers can easily use their own language and benefit from their cultural and family ties without anybody disturbing them and secondly, they are protected from those Germans who do not like them because they are foreigners.”⁵⁶⁰

There has always been a problem of communication between the home administrators and the asylum seekers. Most of the home administrators do not speak any of the languages spoken by the asylum seekers. Either they communicate with body language or in most cases the asylum seekers go away without getting the message. The last alternative is to use a child from the same background if there is a child to do the translation.

In the asylum home in Perleberg, the home administrator said, there are thirty two nationalities, fifty five children, twenty four going to school and eight to kindergarten. The asylum seekers can always go to the Red Cross and collect dresses and shoes. To the home administrator, the dresses are not modern dresses and shoes but they serve the purpose. The dresses are usually old dresses from Germans living in the city or else where.

It is very difficult for asylum seekers to go to theatres, cinemas, and cafés. Their security is not guaranteed when they have to move in the forests or isolated streets. “We are mostly threatened from two directions. Either from racist attacks or from wild animals.”⁵⁶¹

Around the asylum home in Perleberg are warning boards written strictly in German “This was a former military camp so people should be careful to move around the area because of land mines.”⁵⁶² These very warning boards are found around the asylum home in Hohenleipisch.

3.5. Medical Health Care

This section describes the manner in which asylum seekers receive medical assistance when they are sick. It is not for all illnesses asylum seekers receive medical care. In reality most asylum seekers need medical assistance since they are mostly sick because of the status they find themselves in. That is the state of always thinking of beloved ones

⁵⁶⁰ Interview with the home administrator and a social worker in an asylum home in Perleberg, Brandenburg in June 2004

⁵⁶¹ Interview with Joseph in Waldsiefersdorf, an asylum seeker in the asylum home of Waldsiefersdorf, 14.06.2004

⁵⁶² White sign boards are hung round the asylum home in Perleberg concerning the land mines found in the environment.

left at their homes of origin, some do not know where family members are found and the poor conditions they find themselves in their destination countries. The section also describes the treatment asylum seekers undergo from different authorities, for example, social welfare workers and medical officials. Only communicable diseases are treated anonymously in everybody without taking the status of residence of the person into consideration. And how the law of 1997 limit the possibilities for asylum seekers to receive medical assistance.

Illnesses Treated

“The state parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standards of physical and mental health.”⁵⁶³

“Every one has the right to a standard of living adequate for the health and well-being of himself and of his family. This includes food, clothing, housing, medical care and necessary social services. The right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. All children, whether born in or out of wedlock, shall enjoy the same social protection. The health right is internationally recognised as something attached to all human beings, because it is really important to those persons and to the community in which they live.”⁵⁶⁴

From these above clauses, the need to extend optimal health services to asylum seekers and refugees do not raise any doubt to the perspective of human rights and also to society or civil liberties. But this is not the case in Germany. In this country, before the adoption of the law governing the asylum seekers procedure in 1993, conditions were better for refugees. Article 62⁵⁶⁵ prescribed that foreigners living in the receptive centre of refugees or a collective home are obliged to receive medical check-ups against communicable diseases and X-ray on the respiratory organs. According to this article, there was no restriction to an asylum seeker if he or she was sick.

⁵⁶³ Article 12 of the International Covenant on Economic, Social and Cultural Rights, G.A. RES 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976.

⁵⁶⁴ Article 25 of the Universal Declaration of Human Rights, 1948

⁵⁶⁵ Article 62 of the law governing the asylum procedure (§ 62 AsylVfG), 1993, revised in 2007.

In 1997, there was an adoption of a new law on health, which turned to limit the access to treatment to some health problems of asylum seekers. According to this adoption, access to medical care for an asylum seeker is restricted to emergency and acute cases, maternity, illnesses with sustained pains, abortion and communicable diseases.

The new law on communicable diseases (Infektionsschutzgesetz) spells out that some infectious diseases such as Tuberculosis should be diagnosed and cured without asking for the identification of the person and also free of charge at public health offices. Sexually Transmitted Diseases such as Gonorrhoea, Syphilis, HIV and AIDS are diagnosed and treated anonymously. The public health system in Germany is not a federal issue, though the state covers certain subjects that can endanger the interest of the public. According to the 1997 law, asylum seekers with other illnesses do not attain medical treatment because the illnesses are not considered acute or causing chronic pains. So in pursuance to Article 4 of the law to provide services to the asylum seekers⁵⁶⁶, a right to medical treatment can be attained in cases of acute illnesses and illnesses linked with chronic pains.

Apart from that Article 6 of this same law stipulates the right of "Other Services". This refers to recognised services that can secure ones health from pains. For instance, relief, remedy and aid like lenses, hearing aid, wheelchair and medicine? "The treatment of toothache, for instance, cavities, or infection of the roots must be recognised if it is an acute problem or causes continues pains."⁵⁶⁷

Still, Article 4 of the law states, there is a reason to treat chronic diseases because they are often acute and continuously generate pains at the same time and in such a situation, if it is not handled, it turns to threaten life. For instance, diabetes is a life threatening disease. Meanwhile, Article 6 stipulates that it is imperative for one to get further services to safeguard the existence of life and health that will be provided in kind but if it does not function then it can be provided in cash. In all these articles, it is seen that either a disease is acute or life threatening that makes treatment possible. "It should

⁵⁶⁶ Article 4 of the law to provide services to asylum seekers (§ 4 AsylbLG), 1993, revised in 1997 and 2007.

⁵⁶⁷ Förderverein Niedersächsischer Flüchtlingsrat e.V. (Eds.): Leitfaden für Flüchtlinge. Heft 66, Hildesheim Februar 2000, p. 64.

be noted that the medical urgency mentioned above are not always recognised by the authorities! One can do something against the authorities. Either goes to a counselling centre or a lawyer to make an appeal against the authorities.”⁵⁶⁸

There is an example of an asylum seeker in the district of Oberhavel, Brandenburg, who suffers from eye problems. He went to a doctor and he was prescribed lenses but the Social Welfare office has refused to provide him the lenses. He is moving about with the doctor's prescription of the lenses and the rejection from the Social Welfare office to have lenses. Hervais Tazo⁵⁶⁹ said, “ I am really struggling with my eyes but the Social Welfare office wishes that I should get blind.” For Tazo to have treatment now, he needs to find a lawyer to take his case. However he does not have the money to pay the lawyer. He concluded, “It is unbelievable that a Social Welfare officer is unable to believe a doctor. That is strong racism and discrimination because she can never do that to a German. It is just because I am a foreigner and an asylum seeker.”

Health Insurance of Asylum Seekers

As far as medical care is concerned, three types of situations can be distinguished, From the perspective of asylum seekers, this is almost optimally regulated in Great Britain, the Netherlands and Switzerland (as well as for certain categories of persons also in France, Spain and Austria): Asylum seekers have free choice of doctors and have virtually the same right to treatment as insured nationals of these countries, although in certain cases preliminary investigations or limitations are required by the authorities.

In Denmark, on the other hand, asylum seekers and refugees are obliged to get treated by home or contractually designated doctors. In contrast, the German government basically foresees a doctor for the treatment of acute illness.⁵⁷⁰ The reason is, asylum seekers in Germany are not insured. They are under the banner of the social welfare office. The asylum seekers like the long- term unemployed, homeless persons do not have health insurance as other people do. The Social Welfare Office covers the costs of the health insurance.

⁵⁶⁸ Förderverein Niedersächsischer Flüchtlingsrat e.V. (Eds.): Leitfaden für Flüchtlinge. Heft 66, Hildesheim Februar 2000, p. 64.

⁵⁶⁹ Interview with Hervais Tazo, an asylum seeker in Hennigsdorf, Brandenburg, 20.06.2004

⁵⁷⁰ Efnayai- Mäder Denise: Sozialhilfe für Asylsuchende im Europäischen Vergleich. Forschungsbericht No.14 des schweizerischen Forums für Migrationsstudien, Neuchatel (CH) July 1999.

In Germany, about 90% of the population is covered by a health insurance (Gesetzliche Krankenversicherung); others have private health insurance, because they have the right to work. People who have a residence permit and an income can go to a doctor directly but in case of an asylum seeker, he or she will first go to the social welfare office, collect a sick voucher before visiting a medical doctor. With the revision of the asylum law governing the procedure, in 1993, the asylum seekers could have access to medical health care in the territorial district they find themselves. The 1993 law did not protect the privacy of the asylum seekers. Results of medical tests are communicated to the home administrator where the person is dispersed, thereby, informing the authority who is not a medical personnel of the private information on a person.

The Treatment by Health Officials

In Brandenburg, asylum seekers complaints “they are shabbily treated by social welfare officers and medical officials inclusive”⁵⁷¹. Asylum seekers do not have the right to choose a medical doctor. The medical doctors are usually chosen by social welfare officers and imposed on them. For instance, in Neustadt/Dosse and Forst, asylum seekers have two doctors already chosen and the names written on the notice board. If any one is sick he or she is obliged to take one of the two doctors. The chosen doctor is going to be the person’s permanent doctor in whatever illness the person has. It is not like the case of a German or another person with a permanent resident permit who can choose a medical doctor in relation to the illness the person is suffering from.

There is a case of an asylum seeker who had very serious intestinal pains in November 2003. The ailment forced him to visit the doctor allocated to him by the officials. The doctor prescribed an expensive drug, “Doloposterine N Kombipackung” that cost 17.54 €. This asylum seeker was expected to buy the drug from his monthly 40 € cash. He took the case to the house administrator who called the Social Welfare office to intervene in assuming responsibility for the drug. The Social Welfare office responded negatively. When the asylum seeker went to the doctor again, the doctor gave him a drug that had expired since February 2002. When he complained to the doctor as the doctor repeated the act, the doctor said it was not dangerous because the drug is an anal not an edible or drinkable drug. This very experience is made by asylum seekers in Forst in the jurisdiction of Spree Neiße, here the chosen medical doctor either give expired drugs or

⁵⁷¹ Interview in Neustadt/Dosse with an asylum seeker, 2.06.2004

tells the asylum seekers that they are not sick but suffering from nostalgia. At times they propose to organise their transportation costs back to their countries of origin. They even go as far to inform the asylum seeker that it would have been better to go either to France or Great Britain to seek for asylum and not in Germany.

Another point that embarrassed the asylum seeker was that he had to pay 10 € to visit his doctor. This is according to the reform of the health care system Agenda 2010 from the German Government of Chancellor Gerhard Schroeder. He is not the only one who is paying this money in Brandenburg. But a general complaint from asylum seekers about the 10€ fee. This was later stopped as the asylum seekers raised the complain all over.

Most doctors do not always respect their appointments with asylum seekers. At times when asylum seekers attend an appointment with a medical doctor, when the time reaches and there are other German patients, the doctors make sure they finish with the German patients before coming to asylum seekers. At times, the doctors will tell the asylum seeker to go home and come back at a later hour because he or she has many patients.

3.6. Education

The German policy of education in relation to the asylum seekers is one of exclusion. It puts the adult asylum seekers completely out of the society, meanwhile the children frequently in the background since they have to pursue their education to a certain elementary level and are prohibited from continuing. This has made many children to be completely excluded from the society and is living in Germany without a profession or a speciality.

In Germany, asylum seekers do not have the right to education. This is in line with other anti-migration policy, which is against the international human rights conventions and declaration. For instance, "The state parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human right and fundamental freedoms. They further agree that education shall enable all person to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic and

religious groups, and further the activities of the United Nations for the maintenance of peace.”⁵⁷²

“(1) Every one has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and general education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.”⁵⁷³

Meanwhile, the Convention of the Rights of the Child stipulates that “ State parties recognise the right of a child to education and with a view to achieving this right progressively and on the basis of equal opportunity...”⁵⁷⁴

Relating to these two Articles from an international declaration and an international Convention, education is a key to success. It encourages the development of a person and makes it possible for a person to completely be prepared for the labour market in the search for jobs and communication. Education and professional or technical training creates stabilisation in ones life, good psychological and physical balance, social and financial integration. Education is an instrument of liberation to a person from being a continuous servant to another person but independent to express his or her self anywhere he or she is found.

In Germany, education to an asylum seeker or somebody whose asylum case has come to an end but cannot be deported because the government has no means does not exist. Education is compulsory to children at a certain age. And these ages vary in different states. For instance, “In Bavaria, Brandenburg, Bremen, Hamburg, Hesse, Lower

⁵⁷² Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976

⁵⁷³ Article 26 (1-3) of The Universal Declaration of Human Rights, 1948

⁵⁷⁴ Article 28 of the Convention of the Rights of the Child, 1989

Saxony, and Schleswig- Holstein, the obligatory age limit for children to be in school is sixteen, in other states, it is eighteen years.”⁵⁷⁵

Elementary education is allowed in Brandenburg to the tenth class and the age of sixteen. After the tenth class, it is prohibited for the child of an asylum seeker or somebody bearing a tolerated status (Duldung) to go to school. The case of Betty, a former asylum seeker from Kenya who was based in Prenzlau is a good example. Her two daughters could not further their studies after completing the tenth class. They are just roaming about and wasting their youth away. The restriction of education to part of ones community is the creation of deliberate dependency and the construction of second class human beings.

Vocational Education (Ausbildung)

In order to attain a vocational education, one should first of all be in possession of a work permit. According to the new conditions of the law of vocational education, (neues Ausbildungsförderungs- Reformgesetz, AFRG), anybody in a vocational education can apply for grants (Berufsausbildungsbeihilfe). “This is only possible if a person has a work permit or if a person is a recognised refugee according to Article 51 (1) of the Alien law, (AusIG). Asylum seekers in the asylum procedure or those who have not got the small asylum⁵⁷⁶ are excluded from this grant.”⁵⁷⁷

In Brandenburg, in most of the districts like Uckermark, Barnim, Elbe-Elster, Havelland, Märkisch-Oderland, Oberhavel, Oberspreewald-Lausitz, Ostprignitz- Ruppin, Prignitz, Teltow-Fläming, and Potsdam-Mittelmark, asylum seekers do not have a work permit. In the cities where some asylum seekers have work permits like in Lerchensteig, they are allowed to work just for two hours a day and for those without a work permit, they can do social work which they receive 1€ an hour and cannot exceed four hours a day. With such limitations, one cannot do a vocational education.

⁵⁷⁵ Schulreport (School report). OFF LIMITS. No.37. Hamburg November 2003, p. 22.

⁵⁷⁶ Small Asylum is when asylum seekers are recognised for two years, which can always be renewable (Kleines Asyl).

⁵⁷⁷ Förderverein Niedersächsischer Flüchtlingsrat e.V. (Eds.): Leitfaden für Flüchtlinge. Heft 66, Hildesheim Februar 2000, p. 84.

Asylum seekers, no matter how long they live in Brandenburg, they can never acquire any vocational or general education. After the 10th grade asylum children have to live with their parents at home or if it is a youth that came without the parents, he or she will stay at the asylum home doing nothing. Bruno was an asylum seeker from Angola living in the state of Brandenburg and was based at the city of Potsdam, for about twelve years in the asylum procedure; he neither went to school nor learnt a vocation. Today he has a status to stay in Germany, but he is unable to be proud of a profession. He can only work in restaurants, wash dishes, or in warehouses transporting heavy goods. He complained that:

“I have been destroyed by the German asylum system and the government. My youth was burnt out without any vocation or any other form of educational training. I do not feel myself as a complete human being whenever I am with other people. I always feel something is lacking, I feel inferior and I am hunted by the ghost of inferiority complex.”⁵⁷⁸

Ruth, a female asylum seeker from Kenya, based in Potsdam complains that her children cannot further their education after the 10th grade. The children ask “why did we have to go to school if they knew we were not going to continue our studies to the extent we want?”⁵⁷⁹ The children are insisting to continue their studies. Meanwhile in some states for instance, “Berlin, Hamburg, and North Rhine-Westphalia, some defined offers, also from youth assistance are made. In Berlin, young asylum seekers have free entrance to offers and also have a protected professional training, example, carpenter, painter, electrician, gas and water installation.”⁵⁸⁰

Studies

The level of studies in Germany varies considerably between the asylum seekers, the Germans and recognised refugees. These are due to the many conditions to be fulfilled. One is also expected to know the language and able to have a certain level of education

⁵⁷⁸ Interview in Lerchenstieg with Bruno, a former asylum seeker of the asylum home Lerchenstieg, Potsdam, Brandenburg, 7.06.2004

⁵⁷⁹ Interview in Potsdam with two young asylum children living in Prenzlau, who are unable to continue their studies after haven finished the tenth class, 11.06.2004.

⁵⁸⁰ Schulreport (School report). OFF LIMITS. No. 37. Hamburg November 2003, p.23

in order to do University studies, use the textbooks. One is as well expected to have an advanced level certificate or another high school qualification equivalent to the advanced level certificate. If a certificate is not recognised, or the equivalent is not same to the German's level of accreditation, the person will be expected to sit a special examination (Feststellungsprüfung).

Since 1992, with the adoption of the law governing the asylum procedure (Asylverfahrensgesetz), the state refuses demands for language courses for asylum seekers.⁵⁸¹ Though officially, there is no limitation in the administrative offices to foreign students, the reality can be equally different. "Some Universities or polytechnics demand a residence permit. Others can demand a proof of a health insurance."⁵⁸²

A student with a residence permit has a right to ask for certain services according to the conditions of the Federal law of vocational education (BAFÖG). An asylum seeker without a residence permit cannot have an independent health insurance. In this case cannot study in these Universities or polytechnics demanding health insurance. Meanwhile, a recognised refugee can have such rights and can ask for financial assistance. After a decision from the Federal administrative court, refugees recognised according to the provisions of Article 51(1) of the alien law (AuslG), have the rights to seek for financial assistance. Basically, one can apply for a student aid when one is below thirty years of age. This condition also applies to Germans.

With all the conditions mentioned above, it is practically impossible for an asylum seeker to attain Universities or Polytechnics because it is clearly difficult for asylum seekers to pursue a vocational education or general education in Brandenburg. For instance, in Rathenow, in the district of Havelland, at the alien office, it is stamped on the identity cards of the asylum seekers and those with a tolerated stay that "a training course and studies are prohibited."

This condition does not matter how long one lives in the state of Brandenburg. Julien, who was an asylum seeker in Brandenburg, wanted to further his education. After

⁵⁸¹ With the Asylum Procedure Act (Asylverfahrensgesetz) the asylum seekers lost the claim to German courses, §§ 62a ff and § 420 SGB III.

⁵⁸² Förderverein Niedersächsischer Flüchtlingsrat e.V. (eds.): Leitfaden für Flüchtlinge. Heft 66, Hildesheim Februar 2000, p. 87.

gathering information that he could not go to school, University or pursue a professional education, he was still not convinced. Fortunately or unfortunately for him, he met with the minister of education, youths and sports in Brandenburg, Steffen Reiche, and he posed this problem to him. The minister answered him that “it is not possible for him to further his studies because the law does not permit that.”⁵⁸³

Nevertheless, it is possible for an asylum seeker to be a visiting student at a university. At this level, the student is not fully registered because of his status. The asylum seeker can visit the library, use the school equipment. This status of a visiting student cannot be changed to a full time student because the time the asylum seeker was considered as a guest student, he or she was not looked upon and was never checked.

3.7. Work Permit

The asylum seekers are not given work permit in almost all the districts in the state of Brandenburg. Some of their identity cards state “It is not allowed to be employed or be self employed.”⁵⁸⁴ Examples can be seen in Hennigsdorf, Jüterborg, Ludwigsfelde, Cottbus, Guben, Crussow, Forst, Rathenow, Prenzlau, Neuruppin, Neustadt/Dosse, Kyritz, and Belzig. Generally, to pick up an employment in Germany, one has to have a work permit. This permit is issued only to people who entered Germany as asylum seekers before the 15 of May 1997. In 1991 Germany abolished the waiting time regulations (Wartezeitregelung, §19 I a AFG 1987), which Germany used to suspend the asylum applicants from working during the early months of their asylum procedure. This law prohibited asylum applicants from working as long as they were still living the Reception Centre.⁵⁸⁵ After this period of three months, asylum applicants could search for work and authorities responsible for foreigners on individual case could uplift this. That means the individual must have infringed the law in one way or another that gave the authorities to prohibit the individual asylum seeker from working. And the reasons for such a prohibition must be connected to migration related issues. This possibility to obtain an employment continued until May 1997, when the Federal Ministry of Labour sent out a decision to all employment offices to reject any permission for work by an

⁵⁸³ Interview in Berlin with Julien, a former asylum seeker of Rathenow, 11.06.2004

⁵⁸⁴ This message was copied from the identity card of an asylum seeker from the district of Märkisch-Oderland on the 27.7 2004.

⁵⁸⁵ Article 61 of the law governing the asylum procedure (§61 AsylVfG), 1993, revised in 2007.

asylum seeker. From this period until 2001, there was no talk for labour or work permit for asylum applicants. Asylum seekers, who came in after May 1997, could not obtain work permit. Meanwhile those who had the work permit gradually lost them as the labour office gradually restricted the rights to extend them.

Since 2001, according to the law governing the asylum procedure, an asylum seeker could not have a work permit after a year in the asylum procedure. An asylum seeker can obtain a labour permit for a specific job that is found out that only him or her can do the job. To obtain a work permit, the asylum seeker has to have an employer, go to the employer with a form from the labour office for the employer to confirm by signing that he or she has a job vacancy and needs the asylum seeker to do the job. If the employer signs the form, the asylum seeker takes it back to the labour office. The first reaction of the labour office is to check if there is no German who is interested in the job, next, if there is no European Union citizen and if there is non, they may check if there is no person with a recognised residence permit. This procedure takes about six weeks before the asylum seeker can get the job. This happens in districts where the asylum seekers are allowed to work for two hours, like in Potsdam.

In most of the cases, the asylum seekers complained, "We are job searchers for the Germans and other Europeans. Very few employers will wait for all this while. They are obliged to wait for inferior jobs."⁵⁸⁶

In Perleberg, an asylum seeker Richard Nguemassi complained in a meeting held in Perleberg organised by Flüchtlingsrat Brandenburg where the superintendent from the Protestant church Perleberg, PDS parliamentarian, Flüchtlingsrat Brandenburg, Jugendmigrationsdienst Prignitz, Mobiles Beratungsteam Tolerantes Brandenburg, Flüchtlingsinitiative Brandenburg and some asylum seekers from the asylum home in Perleberg were present. Richard explained how he was refused work permit twice after he got a job. In the first instance, he was told that he had not made a year as stated by the law. In the second instance, there was an excuse that the employer did not stipulate clearly that the job is specifically for Nguemassi.

The permit given to asylum seekers in districts where the asylum seekers can work usually have a limited duration, mostly, one year. This is because the permit is usually

⁵⁸⁶ Interview in Brandenburg with an asylum seeker in the state of Brandenburg, 11.06.2004

given for a defined job and a defined employer not a permanent permit that the asylum seeker can use in search of jobs everywhere.

Various Types of Work Permit

There are usually two types of work permits in Germany. The first one is the permission to work known in German as “Arbeitserlaubnis.” The permission to work is a temporal document with some limitations. For instance, it cannot be used in all the different types of jobs in Germany. People with unlimited residence permit like students, people learning the German language, can have it as special provisions. That is according to paragraph 16 of the residence law. This is given in normal cases, according to paragraph 61 of the law governing the asylum procedure to an asylum seeker after one year of waiting in the asylum procedure and whose case is still pending.

The other work permit is known as an entitled right to work “Arbeitsberechtigung”. The entitled right to work is unlimited in the labour market. That means that a person with such a work permit can do every type of job like a German citizen. In this case the person is not limited to a particular employer. To obtain this right, one must have a residence permit or an authorisation to reside (Aufenthaltsbefugnis) and have lived continuously in Germany for six years as a recognised refugee, that is for refugees recognised under Article 51 of the alien law (AuslG). Somebody who is still in the asylum procedure cannot benefit from these advantages as well as somebody who has a tolerated stay in Germany (Duldung).

Forced Labour

For asylum seekers whose asylum claims are still being processed or those whose asylum claims have been rejected and are waiting deportation, they can according to paragraph 5 (2) of the law to provide services to the asylum seekers (§5 (2) AsylbLG) work and earn the sum of 1€ an hour as allowance to spend (Aufwandsentschädigung). In Waldsiefersdorf, an African asylum seeker said, “ We can only work for 1€ an hour and can only do four hours a day. For us Africans, it is even worst. We are made to work outside during winter while asylum seekers from other continents and Eastern Europe work inside the building.”⁵⁸⁷

⁵⁸⁷ Interview in Waldsiefersdorf with Joseph, an asylum seeker in the asylum home in Waldsiefersdorf, 14.06.2004

In Cottbus, the asylum seekers complained that “ We are obliged to do social work which we are paid 1€ for at least one year. This obligation is an abuse to our human rights. It is some sort of forced labour because we do not have the right to choose either to do it or not. We do clean the city of Cottbus. This is a job that should have been well paid.”⁵⁸⁸

The International Convention of the Rights of Migrant Workers of 1990 states in Article 25 (1), “Migrants workers shall enjoy treatment not less favourable than that which applies to nationals of the state of employment in respect of remuneration and: a, other conditions of work, that is to say, over time, hours of work, weekly rest...safety, health.”⁵⁸⁹ It is rather unfortunate that the asylum seekers do not have these rights. They are complaining of doing serious jobs for very low amount. Reverting to the quotation, they are not treated as the Germans so they feel abused. They were supposed to be paid equally like the Germans but that is not the case.

3.8. Shopping System

Shopping with Vouchers and Smart Cards

In most asylum homes in the state of Brandenburg, vouchers and smart cards are given to asylum seekers as their media of exchange, for example, Rathenow Perleberg, Forst, Guben, Frankfurt/Oder, the Social Welfare officials visit the asylum homes at least once in a month. In some districts, the vouchers or smart cards are given twice or trice a month for instance, Perleberg, Prenzlau and Cottbus. The reason for these visits is to issue out vouchers to asylum seekers or reload the smart cards with credits for shopping.

There are few districts that do give cash to the asylum seekers in Brandenburg. These are Lerchensteig, Hohenleipisch, Belzig, and the city of Brandenburg and just of recent in July, other homes like Ludwigsfelde, Luckenwalde and Jüterborg started receiving cheques. In Berlin, it is the contrary. All the districts except of one, does not give cash to the asylum seekers and that is the district of Berlin Spandau. According to Article 3 of the law to render basic services to the asylum seekers (Asylbewerberleistungsgesetz), the reasons why social welfare services are rendered to the asylum seekers are;

⁵⁸⁸ Interview in Potsdam with an asylum seeker in Cottbus during the Conference of asylum seekers on the 11.06.2004 in Potsdam

⁵⁸⁹ Article 25 (1) of the International Convention of the Rights of Migrant Workers, 1990, p. 17.

“The urgent need for food, housing, heating, health- and personal hygiene and to have non durable goods of the household.”⁵⁹⁰ It is strictly due to these reasons that the asylum seekers are given vouchers or smart cards to do their shopping and a meagre sum as pocket money.

The Amount Issued

In the state Brandenburg, the asylum seekers above 15 years of age are issued 40 € cash as pocket money monthly and 150 € in vouchers, that means an asylum seeker is entitled to 10 € cash per week. Those of age 14 receive 20 € cash monthly. This means they are entitled to 5 € per week. In most of the homes, after an asylum seeker has been in the procedure for three years, he or she receives more fiscal cash to the tune of 90.94 € per month as pocket money and the rest in either vouchers or smart cards. The authorities can deduct this money if they deem that the asylum seeker or somebody with a tolerable status is not cooperating with them. For instance, in Cottbus, Douglas, with a tolerable status, lost 95 € monthly. Instead of 190€ monthly, he is given the sum of 95 € because he is refusing to go to the embassy of his country to collect a travelling certificate to facilitate his deportation since his asylum claim was rejected. Douglas said:

“Duress is being exercised on me and many other asylum seekers to certify documents that can facilitate our deportation, meanwhile the dangers of dead or imprisonment in our countries of origin on our lives are still there.”⁵⁹¹

Another example that the Social Welfare office uses to deduct money is, if the asylum seeker is not present on the day the social workers issue the vouchers or reload the smart cards. The amount to be deducted is determined by the independent social welfare office in the different districts. In Potsdam for example is 20 € meanwhile in Rathenow is 5 € per day. This is to show how the laws governing the asylum seekers procedure are not well defined and they give room for the officials working with the asylum seekers to use their discretion in decisions making.

⁵⁹⁰ Article 3 of the law to provide services to asylum seekers (§ 3 AsylbLG), 1993, revised in 1997 and 2007.

⁵⁹¹ Interview in Cottbus with Douglas, an asylum seeker in the asylum home in Cottbus, 12.06.2004

Daily Experiences with Vouchers and Smart Cards

“It is a very hard situation. Our daily lives are regulated with the vouchers or smart cards system,”⁵⁹² said an asylum seeker. With the vouchers and smart cards, they are allowed to do shopping in designed supermarkets. In Perleberg for instance, they have Extra and Aldi and Familial supermarkets, and in Waldsieversdorf in Märkisch-Oderland, it is only Kaufland. The authorities usually choose these supermarkets. This means if the asylum seekers want to buy from another supermarket in the very city or district, it is practically impossible because the vouchers or cards are not accepted. These vouchers and smart cards are used monthly. He or she must use all the given vouchers in the stipulated month. One cannot keep it for the next month. It is the same with the smart cards. The cards are reloaded monthly and the amount must finish in each stipulated month. If a voucher or smart card is given in a particular district, say Havelland, it cannot be used out of the district, say the district of Potsdam.

Charlie an asylum seeker in Cottbus found that as unfair. As an African, he said:

“There are times I will like to eat some African foodstuff which is impossible for many reasons, I can only use my smart cards in my particular district and in my district like in all others, there are no African shops. The African shops are in usually big cities. The other point is that the contracts signed by the Social Welfare officers are done with German supermarkets so the African shops are left out. I find that as cultural discrimination.”⁵⁹³

On the vouchers, it is stated that an asylum seeker has a right to receive a balance of at most 10% of the face value of the voucher. That means if a voucher has a face value of 20 € and the asylum seeker uses 90%, the person has the right to receive a balance of 10% in cash. This prohibits the asylum seekers from buying for less than 90%. If they do, they cannot have 15% balances.

With the smart cards and the vouchers, the asylum seekers in some districts in the state of Brandenburg are usually not given receipts after shopping. They are unable to calculate how they have done their shopping, if they have been cheated or not. Pertula said,

⁵⁹² Interview in Perleberg with an asylum seeker in Perleberg, 5.06.2004

⁵⁹³ Interview in Guben with Charlie, an asylum seeker in the asylum home in Guben, 10.06.2004

“In Perleberg, I have always seen Germans controlling their receipts after shopping but with us, they don't give us any receipts. I think this is unfair and discriminative. If we do not receive receipts, how are we sure that this is not a ploy to cheat us?”⁵⁹⁴

Goods to Buy

Asylum seekers cannot buy certain goods with their vouchers and smart cards. For instance, cigarettes, alcohol and dresses. The officials claim that the vouchers and smart cards are for foodstuff. For the dresses, the authorities claim they give out annual vouchers to buy summer and winter dresses but according to most of the asylum seekers in the different districts, they do not know if such a thing exists. For instance, in Potsdam, Annette Flade, a female pastor, offered a Christmas present from the Red Cross of Potsdam to the governor of Brandenburg, Matthias Platzeck when he was still the mayor. The reason of the present from the Red Cross was to inform the then mayor that the asylum seekers in Potsdam have been reduced to “second class human beings where they have to permanently wear second hand dresses from the Red Cross.”⁵⁹⁵

In another district where these vouchers for dresses are being given, the salesmen determine what type of dresses the asylum seekers are supposed to buy in the shop. In Hohenleipisch, asylum seekers are now receiving cash but before the asylum seekers started receiving cash, Ngoma, an asylum seeker collected his winter voucher went to a shop to buy a jacket. He said,

“The jacket I chose, the salesman refused me from collecting with the grounds that I was not supposed to use vouchers for the particular jacket and was imposing on me to take a different jacket. As I resisted, the supermarket officials called the police. When the police came, they took side with the salesperson obliging me not to collect the jacket as said by the salesperson. I was taken to court and fined 350 € on grounds that I destroyed the jacket I needed, resisted the police and wounded a police officer. The court never cared to see if it was my right to use the vouchers to collect what ever article I needed in the supermarket in my district or not.”⁵⁹⁶

⁵⁹⁴ Interview in Perleberg with Pertula, living in an asylum home in Perleberg, Brandenburg, 05.06.2004

⁵⁹⁵ Annette Flade, female pastor assigned to pastoral duties for foreigners in Potsdam under the Evangelical Church, Christmas 2001.

⁵⁹⁶ Interview in Hohenleipisch with Ngoma, an asylum seeker in the asylum home in Hohenleipisch, Brandenburg, 12.06.2004

There are many obligations that asylum seekers cannot meet because they receive a great proportion of social assistance in either vouchers or smart cards. For instance, each asylum seeker needs a lawyer for his or her asylum case. Most of the lawyers demand 50 € per month. An asylum seeker receiving 40 € is expected to pay the lawyer, transport shopping, social welfare offices, aliens offices and telephone.

3.9. The Law of Residential Restriction

The Branch of the Federal Office confines the asylum seekers in different districts for the Recognition of Refugees and they do not have the right to go beyond the borders of their different districts without permission from their different aliens offices. This stipulated restriction is found in Articles 56 to 58 of the law governing the asylum procedure in Germany (Asylverfahrensgesetz). The asylum seekers whose asylum claims are still pending, (Aufenthaltsgestattung), are obliged to stay in their districts where the alien offices are found. Meanwhile those with tolerated status (Duldung) could travel in the whole federal state in which they are allocated by the Branch of the Federal Office for the Recognition of Refugees. They are prohibited from going out of their state without permission. If an asylum seeker leaves the stipulated district without permission and is caught by the police, he or she will pay a large fine. If this act is repeated, it could end the person a prison sentence. The case of an asylum seeker Mr. A. A. in Rathenow is a good example. He was caught twice by the police in the cities of Bielefeld and Oberhausen without a permission, the case was sent to the Magistrates' court in Rathenow where he was condemned "in the name of the people" to six months suspended sentence."⁵⁹⁷

That means if within two years he commits any crime or is caught out of his district without permission again, he will serve a six months prison sentence in prison. The permission obtained from the alien office is meant to show the police in case of any control. This permission carries the name and address of the district an asylum seeker is living, the address of the alien office responsible for the asylum seeker and the full data of the person.

⁵⁹⁷ According to the Magistrates' court in Rathenow, the accused infringed the law governing the asylum seekers in two instances. Due to that he was condemned to a total sentence of six months in prison suspended sentence. Reference No. 2Ds 420 Js 41851/ 03 (365/03), 26.02.2004.

There is certain exception to the law where the alien office could issue permission to an asylum seeker to leave the defined district for a short period. For instance, visit to a lawyer or a counselling office, religious activities, health problem that needs immediate attention like operation, to participate in demonstration or serious family issues like to visit a sick relative. Meanwhile in Article 57 (3), the asylum seekers can go to officials and courts without this special permission provided he or she can present the appointment document. Alwin Ziel claimed, "All these conditions are to permanently control the movement of asylum seekers."⁵⁹⁸

Another experience that the residential restriction law in Germany plays is the constant control of black Africans. Daniel, a student at the Free University Berlin entered a train from Düsseldorf and was going to Brandenburg, he was surprised that in every stop the train made, police officers entered the train and controlled people who looked foreign. He was controlled in Düsseldorf, Duisburg, Hanover, Wolfsburg and Stendal.

In Wolfsburg, as the police officers were approaching, he was by then frustrated. As they greeted him "Good afternoon" in German, an act usually done before controlling, Daniel asked them, "What is good afternoon? Good afternoon in Düsseldorf, good afternoon in Duisburg, good afternoon in Hanover, in Wolfsburg and now good afternoon. Am I the only person in the train?"⁵⁹⁹ He questioned. This rebellion was not only boiling in Daniel's stomach alone. Some Germans stood up in support of Daniel. One German asked, "is this a police state or are the police officers trained to frustrate foreigners and migrants living in this country?"⁶⁰⁰

A similar situation happened to Koku, an ex-asylum seeker from Togo. He was returning to Rathenow after his wedding in Frankfurt/Oder. Since there is no direct train from Frankfurt/Oder to Rathenow, he and the wife had to change trains in Berlin Zoologischer Garten train station. At the station, the wife of Koku went to the toilet. Two police officers

⁵⁹⁸ Ziel, Alwin, former minister of labour, social affairs, health and women affairs of the state of Brandenburg, in a visit to Rathenow in the main administrative building 2000

⁵⁹⁹ Experience of Daniel. Daniel is a student of the Free University (FU) of Berlin studying political sciences. Daniel visited his friends in Düsseldorf in January 2004. As he returned from Düsseldorf, he got this experience.

⁶⁰⁰ Experience of Daniel

came up to him. Koku was very polite and told the police officers he was just returning from his wedding and his wife had gone to the toilet.

Despite this explanation, the police officers insisted to copy the information on his identity card. During this interval, the wife of Koku arrived. The wife introduced her self and document to the police officers to prove the fact that Koku was the husband but that did not stop the police from confiscating Koku's identity card. Ines, the wife of Koku felt humiliated by the police officers. She got red. Her father was a police officer so she knew exactly what to do. She copied the number of the police vehicle, the date and the time. When Ines went back to Frankfurt/Oder, she called the police head quarters in Berlin and reported the matter. The police later sent an apology.⁶⁰¹

It usually happens that during weekends, police officers mostly block train stations and control migrants travelling by trains. The reason is that at the weekends, there is the cheapest means of transport with special "Weekend trains". With these trains, up to five people can travel with a ticket at a very reduced rate. The police know that most asylum seekers use these trains. They block leeways to the platforms and control "foreign looking people."

"This law reminds us of the apartheid South Africa where before the Blacks could go beyond their district to the district of the Whites, they needed a permission known as Dump Pass. As written in Mandela's Long Walk to Freedom, this law made many South Africans like Nelson Mandela himself and Justice, the cousin of Nelson Mandela to always tell lies, as they wanted permission to go to Johannesburg. This is what we are now facing in Germany. We have to lie to protect our privacy."⁶⁰²

"This Article 56 is used to stigmatise the asylum seekers, refugees, migrants and people who are "foreign looking" in the eyes of Germans and the general public. The massive control from the police and custom officers create the impression that the asylum seekers are all criminals," said Thomas. He is a former asylum seeker and he narrates one of his experiences with the police. On a weekend, he took the weekend train to go to

⁶⁰¹ Experience of Koku and his wife Ines at the train station Berlin Zoologischer Garten

⁶⁰² Interview with Jean Claude, member of the initiative of asylum seekers in Brandenburg (Flüchtlingsinitiative Brandenburg, FIB), 14.06.2004 in Lerchenstieg, Potsdam

his then girl friend, now his wife. As a characteristic of this train, it makes several stops and cost cheap. It is a tradition that the police mostly block train stations during weekends to control asylum seekers who left their districts without permission.

At Frankfurt Main, as the travellers changed to the next platform waiting for the next train, after about thirty minutes, everybody was restless, two police officers came on the platform, Thomas was standing in a group of Germans, meanwhile there were some black asylum seekers standing a little bit away. As the police officers saw these blacks, they went directly to them and greeted, „Guten Tag, Ausweis bitte“ which means good afternoon, could we see your identity cards please? Thomas said, “The police usually speak in low voices not to draw the attention of any nearby person to understand the problem.” The black asylum seekers showed their identity cards. According to their identity cards, they were not legally supposed to be at Frankfurt Main. That was not their district. The police handcuffed the blacks. Immediately, the Germans started whispering to the hearing of Thomas that surely the Africans have committed a crime somewhere and were escaping. Thomas said, “One of the Germans echoed, I see this almost every day, the Africans and the police.”

As an asylum seeker, Thomas knew why the police arrested the two Africans. Thomas moved up to the police officers, greeted them politely, changed to an American accent and asked if the black guys have committed a crime. The police officers said, they were not supposed to be where they were. As the officers were explaining, the Germans came to listen to what these men have done. He asked the police officers, “ if you go to America, Asia or Africa and a police officer comes and put a handcuff on your hands in the public when you have not committed a crime, will you be happy?”

The Germans by then could understand it was not a crime but a matter of being out of asylum district. Fortunately they were the open minded. They asked the police if that was a crime and if there is a law existing in Germany like that. Feeling the pressure, the police took off the handcuffs and advised the blacks to always collect permission before they leave their districts.⁶⁰³

⁶⁰³ Experience of Thomas, a former asylum seeker in Rathenow

Asylum seekers are threatened with death. Many of them live in places where the Nazis are found like in the whole of Brandenburg and they do not have the choice to change their residence. They live in constant fears of Nazis attacks and are forced to stay at home or travel out of Brandenburg. Since most of the homes are located in the forests, it is very dangerous for them to go out at night because wild pigs can always launch an attack.

Most people cannot be politically active because the aliens' offices do not issue permission for them to do their political works. They become inactive and develop illnesses. They cannot go to places where there are libraries with books in their languages. They become dull. Asylum seekers have always been demonstrating against this law. In Rathenow, in March, 300 people demonstrated against this law.⁶⁰⁴

Germany has become a police state attacking democratic principles with the illogical controls suffer by asylum seekers and other migrants or "foreign looking people". Though these controls do not stop the asylum seekers, refugees and migrants from movement, they have greatly limited Germany democratic rights promote racism and make the lives of migrants living in the country very vulnerable. The racists have always think the police force is with them when ever they see the police controlling migrants in the middle of other Germans.

The Practices of the Aliens' Offices

Most of the alien offices in the state of Brandenburg do not exercise the minimum rights stipulated by the law governing the procedure of the asylum seekers when they need it. In Cottbus for instance, the asylum seekers say, to obtain permission, they have to apply one to two weeks before the date of leaving the districts. If an asylum seeker has an issue of emergency, he or she has very little or no chance to obtain the permission.

Concerning issues like demonstrations or political activities, most of the asylum seekers in the different districts say, the foreign offices in Havelland, Oberspreewald-Lausitz, Märkisch-Oderland, Oberhavel, Uckermark, refuse to issue permissions. If it is a visit to a friend, be a male or female, the host of the asylum seeker has to either fax or post his or her address to the aliens' office. Some of the aliens' officials telephone hosts of the

⁶⁰⁴ Nagel Eric: 300 demonstrierten gegen Asylgesetze. Taz, 5th March 2001, p. 6.

asylum seekers to confirm the visit. At times the alien offices call the host and try to convince his or her that the asylum seeker is a criminal and may be having a criminal intention to visit a region. Mr. Weise of the aliens' office in Rathenow did this practice.

4. Deportation from Germany

Deportation from Germany is always on daily basis. This is carried out through the use of many different practices by the German authorities like the aliens offices, police and ministry of interior. The aliens' office workers usually pop in rooms of asylum seekers at night for deportation. People are deported at the land, air and sea borders and those already found in the mainland of Germany, who already filed in asylum claims and the claims were not recognised. In some cases, asylum applicants whose cases are still pending are put on deportation lists. The deportation camps are usually the last station of asylum seekers in Germany. That is why the housemaster at the departure centre of Engelsberg said: "This asylum camp is the last station for you in Germany. After this, do not come again."⁶⁰⁵ Before I proceed on the manner in which deportation is carried out in Germany; I will first of all present the statutory procedure of deportation in Germany. Officially if an asylum claim is finally not recognised, the asylum seeker will receive:

4.1. A Statutory Temporary Suspension of Deportation (Duldung)

This document is not a resident permit but a certificate to prove that the asylum seekers do not more have any resident title in Germany but their deportation is made difficult because either the officials have not yet got a means to identify the asylum seekers or there are no official documents to prove the persons nationalities that can oblige the embassies of the countries of origin of the applicants to establish travel certificates.

For this reason, the authorities are usually observant to have any proof related to the countries of origin where the refugees' applicants originate. During this period, most of the rights of the bearers of this document are cut off by the aliens offices like reducing the social welfare money or sum on the vouchers, reducing the area of space he or she could circulate, daily control and refusing certain services. The main reason is to make life very difficult for bearers of this certificate to support and be forced to leave the country. The aliens' offices usually oblige the bearer of this document to go to embassies

⁶⁰⁵ Schallenberg Jörg: Das heimliche Ausreisezentrum von Engelsberg. In: die tageszeitung (taz) 23.01.2004. This information was got from www.ausreisezentren.de , accessed on the 17 of November 2007.

of their countries of origin to obtain at least a document to prove that they are from these countries. If that is done, the aliens' offices will use the documents to prepare travel certificates.

4.2. A Certificate to Cross the Border (Grenzübertrittsbescheinigung)

According to Articles 42 III and 50 I of the aliens' law, the aliens' authorities have the right to threaten the aliens with deportation as soon as the obligation to leave the country goes into force. This is in case the alien does not leave the German territory consensuously within the defined period on the certificate (Ausreisefrist). Article 42 I of this very aliens law in its 42 III stipulates that an asylum seeker is forced to leave Germany if he or she does not have residence authorisation either immediately or in a defined period. This certificate is given because the alien office is not sure of the country to deport the asylum seeker. At the moment that the defined time in this certificate is expired, the failed asylum seeker is opened to the risk of being arrested by a police for deportation. In this case the police will arrest the person and later releases because there is no defined country. In other cases, the person is brought to a deportation camp.

The Use of Force

The use of force by the German machinery reached its highest height that came to the public as already mentioned in 1999, when a 30 year old man from Sudan, Aamir Ageeb died on the way as he was being deported from Germany in the hands of the German Border Guards (Bundesgrenzschutz). Aamir who did not want to go back to Sudan because the situation was not stable and his life was threatened resisted his deportation.

"The officers clamped a motorcycle helmet on Ageeb's head and tied him to his seat, in order to "stop him from lashing out and biting." The German officers claimed they "pressed down his head during take-off. When they later tried to raise Ageeb from his unnatural head-down position, he showed no sign of life."⁶⁰⁶

The use of force could also be seen in cases where refugees are deported in very bad health. The case of Issa Fallou, an asylum seeker from Togo who collapsed in the courtroom in Frankfurt Oder, was rushed to the hospital, later transferred to Berlin. As he

⁶⁰⁶ Busch: Fortress Europe? CL No. 58. June 1999, p. 18.

Source: Neue Züricher Zeitung, 31.05.1999, Christian Science Monitor, 11.06.1999 and Inter Press Service, 02.06.1999.

And Heck 2005, p.182.

came out from the hospital the aliens office in Rathenow still wanted to deport him in his bad health situation. He was carried to the deportation prison in Eisenhüttenstadt where he collapsed for the second time. He was rushed again to the hospital. As he came out from the hospital, under the pressure of deportation, he was forced to leave the country to a different country. Before fleeing, Issa told me,

“I cannot go to my country now. I have a very bad health that is why I always collapse. I am forced to leave this country to another. Germany does not respect human rights. Germany is only showing an image building to the outside world but internally is rotten like rotten potatoes. I will leave you and this is the last time we shall see again.”⁶⁰⁷

4.3. Interviews for Deportation

Another instance where the German government uses force to deport asylum seekers since the beginning of 2000 is to carry the asylum seekers to an office where delegations from different countries are brought to identify asylum seekers and failed asylum seekers in order to deport them. The members of these delegations will try to identify the accent or local expression of the asylum seekers or failed asylum seekers and later inform the aliens officers if the asylum seekers are from their country of origin or not. Abdel Amine, who was an asylum seeker in Rathenow and who was still in the asylum procedure, originally from Togo refused to participate in such an interview because he considered it as illegal and unprofessional. He said:

“I do not need to go to such interviews. I tried my best to convince the others not to go but unfortunately, they were all afraid and went. People like Baba Sani, who still had their normal identity cards, (Aufenthaltsgestaltung) went to this interview and they are now forced to flee from Germany because the aliens office in Rathenow is exerting a lot of duress on them to leave the country. At the time, I also had my normal identity card. It is not an issue of people whose asylum claims have been rejected but it is an issue of everybody. I found this racist and an abuse of human rights that some aliens offices have been exercising on asylum seekers.”⁶⁰⁸

⁶⁰⁷ Interview in Rathenow with Fallou Issa, an asylum seeker from Togo who was based in Rathenow asylum home. This interview was conducted on the 23rd of November 2006, in his hiding cloister.

⁶⁰⁸ Abdel Amine was an asylum seeker in Rathenow originating from Togo. This interview was conducted on the 05th of February 2007 in Berlin.

Meanwhile Mr. M. who attended the interview said:

“ The so called delegation will pose unprofessional questions to know the region of origin of a particular country an individual is coming. At the same time they try to identify the accent, particular expressions of a country of the interviewees to persuade the interviewees to accept the fact that they are from a particular country. And that if the interviewees do accept, then the official of the delegation will ask the German government not to deport them.”⁶⁰⁹

In most of the cases, the asylum seekers who refused to attend this interview will have their monthly money drastically reduced to make the person suffer. Due to this, many asylum seekers are obliged to go. Becky, an asylum seeker from Nigeria living in Rathenow said:

“Most of us are forced to attend these interviews because if we do not attend our already insufficient amount on the voucher will be reduced. This fear of not having enough legal tender for shopping makes us to go. The other reason is, we do not want to be accused of not cooperating with the German authorities. In a case of non-cooperation, one can be excluded from the country. I have always been to these interviews but always gave different countries of origin. I do this because the Germans have decided to disrespect international conventions when it concerns foreigners. My neighbour, who went to one of these interviews and was answering the questions, has now been sent a letter on when to leave Germany. I find that undignifying of the German government.”⁶¹⁰

In Henningsdorf in the asylum home, many of the asylum seekers said they have been carried to these interviews as well. Jude, an asylum seeker from Nigeria said:

“I was there but I did not alter a word. That made it difficult for them to identify my accent. They asked me so many questions but I was just looking at them. That was a manner of protesting against German illegality. If ever I went there it was just to avoid the fact of

⁶⁰⁹ Mr M. is an asylum seeker from Cameroon who participated in the interview. This interview was conducted on the 22.12.2006 in Berlin.

⁶¹⁰ Becky is an asylum seeker from Nigeria. She has been to so many of these interviews. This interview was conducted on 06.01.2007 in Rathenow.

being accused not to have cooperated with the authorities. Some friends with whom we attended the interviews have threatened with deportation until they have ran out of the country.”⁶¹¹

Before the interview for deportation, the failed asylum seekers and asylum seekers undergo a very strong psychological torment that does not permit a person to make an interview. The asylum seekers are driven with a bus for a distance of about 700 kilometres from Eisenhüttenstadt to Cologne accompanied by police officers to conduct an interview on the very day. They usually take off at 1.a.m, arrive at about 10.am. and are taken directly to the interview centre under very tight conditions. The lack of good sleep, the fright of being accompanied by police officers and the atmosphere where the interview is conducted makes these asylum seekers not to be psychological ready for an interview. The German authorities ignore all these and continue with this abuse of human rights because the people are considered asylum seekers and failed asylum seekers.

4.4. Tricks and Traps for Deportation

There are many tricks applied by the German authorities to trap the asylum seekers for deportation. In many of the cases, the aliens' offices present a special type of form written in German. They make asylum seekers to believe that the form is to identify their identity. If an asylum seeker fills the form, he or she has logically given his or her consent that he or she is coming from a particular country. With this form, the alien offices go to the embassy of the asylum seeker and file for a travel certificate. This method of obtaining the consent of asylum seekers is illegal and criminal but many aliens' offices still use it since they believe nobody can challenge their raw power. Even if challenged, they will say the asylum seeker gave his or her consent in signing. If an asylum seeker refuses to sign, a procedure could be brought against he or her for not cooperating with administrative officials.

At times the aliens offices collaborate with the social welfare offices to deport asylum seekers. In this case, the aliens office ask the social welfare office not to give social welfare benefit to asylum seekers if they do not go and sign certain documents in the aliens offices. In this case, the asylum seeker is forced to do that because he or she

⁶¹¹ Jude is an asylum seeker from Cameroon living in Hennigsdorf. This interview was conducted on the 04.01.2007 in Hennigsdorf.

must eat. Without signing, there will be no social benefits. This is a common practice done by all the aliens' offices.

Asylum seekers are usually forced to go to the embassies of their countries based in Germany. Actually, an embassy is part of a country territory abroad (Territoir Etatique) and if an asylum seeker can get into it then the person can logically go to his or her country of origin without being persecuted. What the aliens' offices usually do, they force asylum seekers to go into their embassies and bring documents to prove the fact that they are from a particular country. If the asylum seeker refuses to go there, the individual will be considered as not cooperating with the state. In this case, the social welfare benefit will be reduced and further sanctions taken against the person. For those who manage to go to their embassies, they stand the risk of losing their asylum claims because the aliens' offices will raise the argument that the individual was in his or her embassy and nothing happened to the person. The case of Nicolas in Cottbus is an example. Nicolas is from Kenya, he was asked to go and bring a document to identify the fact that he is from Kenya. Another example is the case of Vincent from Cameroon who was in the jurisdiction of Havalland and living in an asylum camp in Rathenow. He was always forced to go to his embassy to bring an identification paper that he is a Cameroonian. Even after he had a child with a German lady, he was forced to go to Cameroon to file for a visa from there.

Aliens offices do not only exert their stress on asylum seekers but at times on embassies. I talked with some African ambassadors who confirmed the fact that aliens offices usually bring fake documents to them to obtain deportation documents of their citizens. The ambassadors pointing a pile of documents on their tables said:

“Here are some of the documents that the aliens offices bring to obtain deportation documents. If an ambassador respond positively, they will be the one to say, the black Niger is stupid and can never reason. I can never issue a deportation document on issue like this because they are not genuine.”⁶¹²

⁶¹² Ambassador “A” from an African country sharing his views how some German authorities use unconventional method to obtain deportation documents. This discussion was done in the month of February 2005 in Berlin.

Another strategy instituted by some aliens offices is to create private relationships with individuals working in the embassies of the different countries that can always give a travel document to facilitate the task of deportation. This can be seen in a report that concerns the family of Talla in Rathenow. Last year in June, an official was in the Cameroonian embassy to obtain a deportation document that will facilitate the deportation of Awa Marie Talla and her four children. This document could not be got because before the official arrived at the Cameroonian embassy, his private contact was already on holiday. Before then, the alien office of Rathenow used a photocopy of a divorce certificate of Mr. Talla Antoine and the former wife Awa Marie to obtain a travel document. How this was done, no one knows. Talla Antoine refused to give the alien office original documents of his children when asked because he knew the alien office was trying to provide proofs. That notwithstanding, the alien office in Rathenow still obtained a travel documents for the former wife and four children. Talking to Antoine Talla, he said:

“It is unbelievable what I am seeing in my file. So many things are happening without our knowledge. Even the issue of me not obtaining my residence permit is a whole combination of the ministry of the interior in the state of Brandenburg Jorg Schönbohm and the alien office in Rathenow. The minister called on the day I was supposed to obtain my residence permit and later sent a fax that I should not be given a residence permit. I think he thought my children would not be able to be deported if I have a residence permit since the issue of separation of family will come up. Now it is easy to deport them because they can claim I do not have a residence permit so I can go with my children back to Cameroon even though I am today married to a German.”⁶¹³

To summarise the German camp system from reception to deportation, one can say that:

““The camp system which is prevailing in Germany at the moment is based on 4 pillars: Refugees who apply for asylum are first of all put in a Zentrale Aufnahmestelle (ZAST) (central reception camp). Then they are put for the whole period of the asylum procedure in so-called communal accommodations. These communal accommodations can be normal residential buildings as well as big container camps or former barracks, which fit

⁶¹³ An interview with Antoine of Cameroon on the manner the German state machinery is attempting to deport him and the whole family. This interview was conducted on Monday the 9th of June 2007 in Hamburg.

several hundred people. Refugees and migrants who do not/no longer have an official residence permit end up in a deportation prison, if there is a court decision, which says that they might escape from their imminent deportation. The deportation- and safeguarding-custody can last up to 6, in exceptional cases up to 18 months. Every year between 10.000 and 20.000 people are affected by it in Germany. The people who are admitted to the so-called Ausreisezentren (departure centres) are those, who are supposed to leave the country, but who cannot be deported to their (suspected) countries of origin because they lack valid identity papers. The authorities accuse these people of covering up their identity and say that this is the reason why they have to be forced to contribute in one way or the other to obtain valid identity papers. This means concretely: permanent interviews, language tests, being brought to one's embassy, room searches, attendance controls, tightened Residenzpflicht (residential restriction), revocation of pocket money, etc. The fact that it is often the embassies of the (suspected) countries of origin who refuse to accept the affected people as `their` citizens and who refuse to issue them the corresponding identity papers is deliberately concealed. Last but not least: When looking at their official objectives the 5 Ausreisezentren which are running as experiments have largely failed: Not more than 16% of the people admitted could be deported, of 30% the identity could be established but a deportation could not be obtained; in contrast more than 50% have gone underground and become "undocumented". That the Ausreisezentren are in spite of all this held to, that is that the massive effect of illegalization is more than condoned shows what's behind all this: Not refugees are the problem - at least not under certain circumstances, but refugees who cost money!"⁶¹⁴

5. Analyses of German Asylum Regime

As already mentioned, Germany has a more advanced asylum procedure than Ukraine and Libya but advancement is not really seen in a democratic manner. The example on how to file in for asylum falls short of a real democratic procedure. The independence of the Federal Office for the Recognition of Foreign Refugees does not exist since there is another office existing to challenge positive decisions taken by the Federal office. This other office is the Federal Commissioner for Asylum Issues (Bundesbeauftragter für

⁶¹⁴ Samsa Gregor: Stop the global camp system. Action days against the deportation camp Nürnberg/Fürth. 2003 published in analyse und kritik 474. This information is got from the No Lager Network. The No Lager Network is a movement of asylum seekers, refugees and German initiatives, organisation and individuals. The information was got from <http://nolager.de/blog/node/77> on the 17th of November 2007.

Asylangelenheiten). This office is operating on instructions from the Federal Ministry of the Interior to protect the Federal Republic of Germany, “which are understood as the Refusal of refugees”.⁶¹⁵ This office can protest a decision taken by the Federal Office and can also take part in asylum procedure.

With the existence of the Federal Commissioner for Asylum Issues, the Federal Office for the Recognition of Foreign Refugees has very limited powers. In almost all the positive cases that the Federal Commissioner for Asylum has rejected, there has never been a motion against this office by the Federal Office for the Recognition of Foreign Refugees in courts. If the two offices meet in a court, they become allies and the Federal Office for the Recognition of Foreign Refugees does not defend its original position of recognising an asylum seeker against the decision taken by the Federal Commissioner for Asylum. This has always put asylum seekers in a very weak position since two German administrative bodies are working together against them. Decisions in asylum cases are more administrative and political than humanitarian. Lawyer Hubert Heinhold who has worked in asylum cases for about twenty years shares this argument. He says,

“It is hardly convincing that the already existing imbalance in the struggle between the individual, who is basically in a weaker position, and the state, which is basically in the stronger position, should be further influenced to the detriment of the weaker individual through the medium of a partisan institution, thus placing the individual in an even worse procedural position.”⁶¹⁶

The asylum seekers always take lawyers; pay them on decision that was taken by the Federal Office for the Recognition of Foreign Refugees. The reason is that most of the time, the Federal Office for the Recognition of Foreign Refugees does not come to court to defend its own decision against the Federal Commissioner for Asylum Issues to avoid an instance in which a German institution will challenge another German institution for a foreigner. A thing that is unusual. In Germany, if a government institution takes a decision and another German government institution challenges this decision, it becomes a judicial battle between the two offices where each institution takes its lawyer to defend its position. Unfortunately, that is not the situation with decisions taken by the

⁶¹⁵ Heinhold 2000, p.14.

⁶¹⁶ Heinhold 2000, p.12.

branch office of the Federal Office for the Recognition of Asylum seekers. On this issue of the asylum seeker, the Federal Office for the Recognition of Foreign Refugees keeps away.

5.1. Counselling for Asylum Requests

The importance of a counsellor is to assist an asylum seeker to know the duration of time an asylum seeker can stay in a country before requesting for asylum and other rights related to asylum. In Germany it is stated that the applicant has to request for asylum immediately he or she arrives the country. The duration of twenty-four hours is considered immediately except of cases of asylum seekers who arrive over the weekend. But it is expected that the asylum seeker must request for asylum the Monday following the weekend.

Added to the importance of a counsellor is to inform an asylum seeker to take a lawyer to assist him or her over the issue of “safe third country”⁶¹⁷ that an asylum seeker could be accused of having gone through before arriving in Germany. And also to respond to other accusations that the person entered the country illegally. Without sufficient knowledge of all these technical issues, the claims of asylum seekers become very difficult. Though the case of illegal entry is challenged in Article 31 of the Geneva Convention for Refugees, an applicant cannot be accused of illegal entry provided he or she reports to the authority immediately he or she enters the country and also is able to provide claims found on the Convention that can be used to justify the fact that the life of the applicant is threatened.

Counsellors assist an asylum seeker to be aware of the fact that he or she is coming from a different cultural background than the interviewer and that means there are so many things that are different. This is my experience as somebody who went through the asylum procedure. From my cultural background, when talking to a person whom I do not know, I hold a degree of respect; we usually avoid looking directly into the eyes of the person. A situation that is interpreted differently in the German society. In Germany, I realise that to talk to somebody, one has to fix the other directly into the eyes. In most

⁶¹⁷ Safe third country is one of the countries considered by other EU countries as satisfying democratic and peace conditions that qualify a country to receive any nobody fleeing from persecution. It is prohibited by the EU country to leave one safe third country to another to seek for asylum. This is adopted in article 16 a II of the German Constitution during the revision in 1993.

cases, if the other party avoids looking into the eyes of the other, the person dodging from looking into the eyeballs of the other is usually not taken serious.

This is the situation with most asylum seekers. In such a situation, asylum seekers from African and other parts of the world are supposed to be aware of such cultural differences before meeting an interviewer.

5.2. Assessment of Accommodation by Asylum Seekers

The environment is mostly military like since most of the asylum homes are found in former military camps in the German Democratic Republic era or industrial-like with very large magazines and isolated places out of the cities. It makes it difficult for the asylum seekers to go for a walk and they become lethargic. This leads them to alcohol. It also generates problems amongst them. The corridors are usually noisy since children and others play, quarrel or fight. At times because of stress from solitary living, camp dwellers play music at very high volumes and disturb everyone. At night, the asylum seekers usually have “sleep disturbance” since they are always worried about their future as they are not allowed to work nor to go to school.

Female asylum seeker Pertula, living in the asylum home in Perleberg describes the home as, “a bomb-destroyed area, full of land mines and not convenient for living but where we are forced to live.”⁶¹⁸ There are four old destroyed buildings; the asylum seekers are occupying one of the four buildings. There is no transport system to go to the city centre. To go to the city centre, either one uses an unregistered taxi which costs between 5 and 7 € or go on foot. This informal form of transportation is a private person having vehicles that usually carry the asylum seekers.

Warm water is rationed. Between 1p.m and 3p.m. daily, in winter and summer, the authorities put off the water supply, restore it from 3p.m till 8p.m. That means that after 8p.m, there is no warm water until the following morning when the house administrators resume services. This lack of decent housing conditions robs asylum seekers of self-esteem, something that they are searching for in their new society. One asylum seeker

⁶¹⁸ Interview in Perleberg with Pertula, living in an asylum home in Perleberg, Brandenburg, 05.06.2004

said, "Living in an asylum camp is one of the most destructive and dehumanised things to think about."⁶¹⁹

5.3. Assessment Of Health By Asylum Seekers

Some asylum seekers are greatly traumatised realising that they are sick while knowing that they cannot get medical treatment. One asylum seeker said, "I feel at times as to kill myself since I see no essence of life when I am not treated as a human being. How can I be sick and a social welfare worker is telling me I am not sick?"⁶²⁰

The treatment asylum seekers receive from medical doctors and other health personels and the workers of the social welfare offices when they are sick is enough to make them develop very poor health. If a doctor could give expired drugs to a patient despite the fact that the patient is raising a complain, or a medical doctor telling a patient that he or she should have gone to France or Great Britain. These are both discriminative and racist tendencies that generate fears in these individuals. These individuals feel the health officials are contaminating them and due to that they strongly believe of not having effective protection in Germany.

Others say it creates a lot of inner conflict in them to be sick and not being treated. They say when they were in their countries; they could get medical treatment whenever they were sick regardless of the type of sickness and its magnitude. However, in asylum situation, the decision to treat illnesses is made by the social welfare office. Moreover, there is much apprehension and distrust of the medical services. For example, most asylum seekers are afraid to go to medical doctors because they complain, the medication some of the doctors give them; the doctors do not consider whether or not it has expired.

On many occasions, some asylum seekers find themselves trying to solve their health problems on their own or with the assistance of friends who have legal documents or seek the assistance of humanitarian organisations like Medizinische Flüchtlingshilfe (Medical assistance to asylum seekers) that provide services to asylum seekers and

⁶¹⁹ Interview in Potsdam with an asylum seeker in Neu-Seeland on the 12.06.2004 during the congress of the Brandenburg asylum seekers initiative in Potsdam

⁶²⁰ Interview in Ludwigsfelde with an asylum seeker in Ludwigsfelde, Brandenburg, 1.06.2004

undocumented persons free of charge. Asylum seekers find themselves as weak, defenceless, and in desperate need of medical assistance because they are survivors of torture from their various countries of origin or went through a very difficult route before arriving Germany.

5.3.1. The Psychological Effect on Asylum Seekers

“The very strong asylum seekers are at least confused, the averagely strong ones are mad and the weak ones commit suicide.”⁶²¹

The excessively long period locked in collective asylum homes destroys the psychological morale. Not being encouraged to do anything other than sleep or eat and depending on the social welfare services, regardless of how long one is in the home, creates and fosters profound psychological conflicts. Being discouraged from developing one’s mind as well as using one’s body often leads to depression and suicide as well as myriad psychological disturbances and other physical and mental diseases. This is the case of a Chinese asylum seeker in the home of Guben who committed suicide in his room number 37, on the 13th of April 2006. A death that passed unrecognised because he was an asylum seeker. Before he committed suicide, he usually said to the other mates that:

“I do not have anything in my life-no family, no money, always limited in a jurisdiction of about 35 km square, no freedom, no life but only debts. I have to always pay a lawyer. What is the importance of this life.”⁶²²

The asylum seekers lose their various roles in their society and their social framework is disintegrated. “I have lost my traditional role as a father. I am forced to do that. And that disturbs me a lot.”⁶²³ Fotso is a male asylum seeker based in Rathenow. Fotso is afraid because he does not know what the future will bring. His children do not respect him since he is not the breadwinner of the family. This reality is disintegrating his family. In his country of origin, Fotso was a teacher. He got up every morning, went to work and at

⁶²¹ Interview in Lerchenstieg, Potsdam with Jean Claude, member of the initiative of asylum seekers in Brandenburg (Flüchtlingsinitiative Brandenburg , FIB), 14.06.2004.

⁶²² Flüchtlingsinitiative Brandenburg demonstration on the 3rd of August 2007, interview with Kamga and inscription on the flyers calling for the demonstration in Forst

⁶²³ Interview with Antoine Fotso, member of FIB, in Rathenow, 18.06.2004

the end of the month, he contributed to the home. This made him happy as a responsible father. Today, after about six years of only eating and sleeping while living in Rathenow, in Germany, his wife and children have lost all respect for him.

In sum, the camp life of the asylum home destroys psychological and physical balance and well being. Further exacerbating this the asylum seekers are living in a foreign land, dealing with strange language, food, climate and daily life schedules while continuing to be subjugated to sub- standard living conditions and isolation. Ensuing madness and demonstrations of psychotic behaviours toward themselves and neighbours in the homes are the norm.

5.3.2. Traumatic Experiences And Depression

For asylum seekers and refugees, trauma is usually not a specific traumatic event in the sense of an isolated incident or a set of events, which have left painful scars. More often, it is an enduring, cumulative process that continues during exile because of distinct new events, both in the native country and in the country of exile. It is a chain of traumatic and stressful experiences that confront the refugee with complete helplessness and interfere with his or her personal development over an extended period of time.⁶²⁴

One of the workers in Xenion, a special institute to treat traumatised and depressed people based in Berlin, Doro, a social pedagogue says, "some asylum seekers are traumatised because they are made inactive, passive, continues dependency and in fact the general nature of the asylum system of control."⁶²⁵

She quoted so many cases of traumatised asylum seekers they are treating. One of the cases is a Kurd from Turkey known as Ismet. He was jailed and tortured for eight years in Turkey because he was a member of the Kurdish liberation movement. In Germany, during his interview at the reception centre, he did not say much about his claims because as he said, " the situation in the reception centre made him to believe he was still in jail."⁶²⁶

⁶²⁴ Van der Veer, G.: Counselling and therapy with Refugees. Psychological Problems of Victims of War, Torture and Repression. Biddles Ltd., Guilford and Kings Lynn, 1992, p. 68.

⁶²⁵ Interview with Doro, a social pedagogue of Xenion. Xenion is an institute in Berlin to treat traumatised people and other psychological problems, interview was done in Berlin on the 10.08.2004.

⁶²⁶ Ismet is an asylum seeker in one of the asylum homes in the state of Brandenburg now receiving treatment in Xenion.

During his seven years in Germany, he applied three times to have treatment from a psychiatrist or a specialised institute. But this was not possible for him with the excuse of shortage of places to treat him. During this period, an official in the aliens' office of Märkisch-Oderland faked a travelling certificate to deport Ismet. Through external assistance, Ismet is undergoing trauma therapy in Xenion.

Some asylum seekers and refugees confront new incidents that cause them to suffer from Post Traumatic Stress Disorder (PTSD). These can include and are not limited to a negative answer to their asylum requests, racist attacks, receiving bad news from their countries of origin, insufficient housing conditions, prohibition from working, unable to have proper medical care, isolated and not able to create friends in the countries of exile. All these issues make some asylum seekers believe that their flight has brought neither freedom nor an end to suffering resulting from organised violence, but never ending hardship and pains. In such a situation, some asylum seekers get sick and need medical attention. In this regard, the 1997 law on health is an infringement to the 1948 Universal Declaration of Human Rights, when it limits treatment only to acute and emergency cases and illnesses with sustained pains. Everybody is supposed to be treated equally with regard to all medical treatment.

In Baker studies of asylum seekers and refugees, he said, the study of tortured refugees, the experience of torture is the second major trauma, which is superimposed on the refugee experience itself.⁶²⁷ Meanwhile Keilson categorised three phases of trauma suffered by the Dutch Jewish children during and after World War II.⁶²⁸

The experiences of some asylum seekers and other refugees can be related to this and therefore needs continues medical attention:

The phase of increasing political repression.

⁶²⁷ Baker R. : Psychosocial consequences of tortured refugees seeking asylum and refugee status in Europe. In: Basoglu M. (Eds.): Torture and Its Consequences: Current Treatment Approaches. New York, Cambridge University Press 1992.

⁶²⁸ Keilson Hans: Sequentielle Traumatisierung bei Kindern. Stuttgart 1979.

The phase of major traumatic experiences like detention, torture, terror, combat experiences, the disappearance of relatives or friends and hardship during escape and in refugees' camps. These experiences are linked with a variety of many emotional reactions, including guilt and self-blame, mortal fear, disgust, bereavement, the feeling of haven been deceived and anger.

The phase of exile, including stressful experiences such as receiving bad news from native country, difficulties in cultural adjustment, language problems, social isolation and uncertainty related to the request for political asylum, and problems in finding housing or a job.

One of the main findings of this work is that the health situation of asylum seekers is deteriorating drastically due to different events. The poor housing system where many people have to share one room and lose their rights to privacy and not having a conducive living atmosphere, the isolation of these asylum camps in the forests or industrial areas, and the lack of people to communicate with or an environment to do sports have impacted negative effect and created depression. In almost all the asylum homes, many are suffering from systems of mental disorder, which is the case of Ngassa, in Garzau, who was in the former asylum camp in Waldsiefelsdorf and later transferred to Garzau as the asylum camp in Waldsiefersdorf was closed.

More examples could be seen in Potsdam and Pelerberg asylum camps. The poor health conditions worsen as from 1997 with the law stipulating that asylum seekers could be treated in cases of severe pains and urgency. This isolation of asylum homes exposes the asylum seekers more to risk factors. Aspects like a high prevalence of alcohol, smoking, hypertension. Some of the light sickness will develop to serious illnesses.

Another aspect is the socio-economic dependency that has a very great negative effect on asylum seekers. In the jurisdiction where vouchers and smart cards are given, asylum seekers are not able to buy goods of their choice; they feel very depressed than in jurisdictions where asylum seekers receive money. Generally, the amount of money or vouchers that asylum seekers receive per month is insufficient to meet up with their needs. They complain of not having the freedom to buy what, where and when they want. This aspect, in combination with other limitations does generate psycho-stress. They feel discriminated in shopping areas and mostly lack informal support from the

general public. This socio-economic factor exposes the female asylum seekers to prostitution to search for money to enable them buy women specific needs. In course of the search of money, they are as well exposed to the risk of obtaining diseases like AIDS and other sexually transmitted diseases.

5.4. Education

“Is both a human right in itself and an indispensable means of realising other human rights? As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling population growth. Increasingly, education is recognised as one of the best financial investments states can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joyous and rewards of human existence.”⁶²⁹

Reverting to this quotation, the German asylum system is unable to fulfil very important clauses that can lead to the development of young and old asylum seekers living in this country. The limitation that asylum seekers can attend school only to the tenth class has destroyed the capacity and development of this category of people living in this society. With such a level, there is a creation of dependency and under development in their lives even if in the end they obtain legal documents to live in this country. They are not empowered to take care of their personal selves, decide on their own, and direct their future. They are unable to understand the society in which they live in. This has strongly contributed to the racist sentiments they face when they are in the society.

Education has a vital role of empowering women and safeguarding children from exploitative and hazardous labour and sexual behaviours. These two categories of people are the most vulnerable. Refugee women come mostly from societies that are highly dominated by men. It would have been an opportunity for them to acquire some education and training that will enable them to release themselves from male

⁶²⁹ The African Charter on Human and Peoples' Rights, Article 17 (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

dominance. On the contrary, the German government asylum system suppresses and prohibits them from progressing. This keeps the women constantly at the very weak position to care for themselves and their families. If the women are given the opportunity to study or do a professional training as refugee, they may have to take on new roles and responsibilities including, heading their families. And may also take over responsibilities in the community to educate and train other women and children.

The fact that children are allowed to go to school only to the tenth class turns to rupture their future contribution to them selves and as well as establishment of a democratic society. There is a big discussion today of a majority of migrants and migrant children unable to integrate or contribute in many aspects of this society. The logic is simple if one traces back to the treatment most of these migrants and their children received as asylum seekers. The protectionist policies prohibited not only the children but also adults from studying or doing a professional training which would have increased their chances in this society. This has made them to become a societal burden Most of them missed to go to school at the convenient time. The refusal of the German government to allow a minor exceeds the tenth class is an attack of the rights of the child. The beginning-step of participation as stipulated in Article 12 of the Convention of the Rights of the Child connects the children's developmental stages with the right of expression in matters concerning them. This point is strengthened in Article 13, which states:

“The child shall have the right to freedom of expression; this right shall include the freedom to seek and to receive information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of the child's choice.”⁶³⁰

This is also linked to Article 27, which calls “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”⁶³¹ The isolated lifestyle of asylum children in asylum homes does not meet with the standards of this Convention. This turn to deprive the child or minor from certain freedom like to assemble with other children or elders and the right of information.

⁶³⁰ The Convention on the Rights of the Child, Adopted by the General Assembly of the United Nations on 20 November 1989

⁶³¹ Article 27 of The Convention on the Rights of the Child, November 1989

The manner in which Germany treats asylum children is different from the manner in which German children are treated. If one takes a look into Section 8, of the new German Children's Act regulating the participation of children into institution. The German Children's Act also demands the right of public education for the children to extend childcare, to further conditions for socialisation, abolition of three-tiered German school system.

Asylum children are distressed and usually find a lot of difficulties like other distressed children to speak out what they have experienced. At times some have experienced issues that built up certain degree of mistrust towards adults. It will be of great importance if such minors are encouraged to study as much as they want in order to address such experiences in full. Example can be an experience of a child soldier abducted by an adult. No one can recount the experience than the child who suffered it. In this light, when the German government shatters the possibility for such children to go to school to the extent that they can build a certain degree of trust or maturity to voice out such experiences, many information will be kept undiscovered and just half could come out. This will generate a problem in the society one cannot really treat because of lack of enough information. Education facilitates the development of children's level of understanding of issues and enhances the possibility to express themselves in future. This is logical because teachers provide avenues for one to be able to express the feelings.

Germany is not only attacking the rights of children and women but also other asylum seekers who cannot go to school. In the World Declaration on Education for All, it is stated in its Article 1 that;

"Every person – child, youth and adult- shall be able to benefit from education opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning

needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time.”⁶³²

Germany failing to meet this clause to accept the fact that asylum seekers should officially attend schools beyond the tenth class has failed to empower a category of people living in its society. They cannot build the society or their societies of origin if it happens that they one day return. To promote the education of all will increase social justice, encourage environmental protection, make one become tolerant towards religious, political and social systems differing from their original positions and they will see into it that basic human rights values are upheld or respected.

5.5. Labour Permit

The restriction asylum seekers face here is because the government feels they are here to profit from their job opportunities. Some politicians believe that if the asylum seekers and other migrants did not come to Germany or Europe, there would have been more than enough jobs for their citizens and that is why they have to stop the “economic refugees.” This has created a situation where many asylum seekers do not have labour permits and are faced daily with racist verbal and physical attacks from the media, politicians and civil society.

Reverting to the argument that migrants and asylum seekers do cause unemployment. It is challenged since they take jobs not wanted by the citizens of a country. This on the contrary promotes growth, Teresa Hayter writes:

“The thesis that immigrants cause unemployment seems to have a little or no basis in reality. As is well known, unemployment was higher in the 1930s, when there was hardly any immigration, when it is now. Unemployment in Europe was lowest in the period of major immigrations after the Second World War. It is clearly caused by capitalist recessions rather than by immigration...It can be argued, in fact, that an influx of refugees and migrants may cause boom conditions, as the Cuban exiles had in Miami and the pied-noirs possibly have in the south of France. A principal argument for the thesis that immigrants do not cause unemployment is that they tend to take jobs which

⁶³² Article 1 of World Declaration on Education For All reached during the World Conference on Education for All, 5-9 March 1990, Jomtien Thailand.

are shunned by the natives, and therefore provide an essential means of enabling economies to function and expand.”⁶³³

The camp system is to prevent this people from officially working and to select the wanted migrants or asylum seekers for specific jobs. Camps force migrants and asylum seekers to do jobs, which the citizens do not want because they are cheap or dirty for the states. The reasons why the camps dwellers are forced to do these dirty jobs are because the social welfare is too small to sustain their needs and they are pressurised by deportation. The camp system is benefiting most German employers because they always have cheap labour force to meet their objectives. Some of the objectives are that the camp dwellers do work for very long hours and under very bad conditions.

The experience of no labour permit is a strong form of social exclusion, which the asylum seekers are unable to reconcile with since this has a damaging effect on their personality. Many of them say:

“The German public thinks we are lazy and did come here to depend on their social welfare benefits which is not the case. This is one of the main reasons contributing to the high racist sentiments found in this country. Hardly does a great majority of the German public believe that we are refused work permit by their government. We need work permit to work and contribute in the society we live in and to be able to meet up with our needs.”⁶³⁴

It is widely seen that this method of searching for individuals with permanent stay to take over jobs found by asylum seekers is a strategy to keep the asylum seekers out of the labour market and to reduce their chances of having employment and other opportunities in relation to those with legal documents. This discriminative and racial attitude of strategy to asylum seekers contribute to their mental problems and other forms of solitary life because their possibilities of getting a job is very minimal. This has made them to live in a very weak social status that makes it difficult for them to organise

⁶³³ Hayter Teresa: *Open Borders. The Case Against Immigration Controls*. Second Edition, London 2004, p. 158-159.

⁶³⁴ Interview with asylum seekers in the Flüchtlingsinitiative Brandenburg. This interview was conducted on the 13th of June in Berlin 2007.

themselves but on the contrary see one another as an enemy. This socially weak situation instrumentalised by government can create conditions in any social group that is described as follows:

“You know what is really killing us? We’re economically shagged. You can’t go anywhere; you can’t get anywhere, that’s what it is. All these things will just keep escalating. It can’t change. We cannot get no better, and that’s what’s is happening. Any area where you see there are high levels of unemployment, you’re going to find high levels of mental health problems. It’s because these people are suffering major frustration. They can’t go anywhere, they can’t see anything, and they can’t see the wood for the trees because there is no way for them to get out of their situation. You know, every day is hopeless thing. They can’t get the work, and then when they do get the work, they ‘re still going to end up with that racist thing because the employer are going to be stereotyping them. It’s a vicious circle, my friend...”⁶³⁵

5.6. Assessment of the Shopping System by Asylum Seekers

“Now that we cannot buy what, when, how and where we want, we see our selves as sub-standard human beings. It is very difficult for us to live without consuming certain foodstuff because we cannot buy the foodstuff with our cards and we can only do shopping in particular areas. In some of the shops, we have a special pay bank. If the person serving on the pay bank is not there, we have to wait until the person comes.”⁶³⁶

Asylum seekers consider this apartheid. They questioned, “Why should we have a particular pay bank from other people who use cash? Are we living in the then apartheid South Africa?”⁶³⁷

⁶³⁵ Campbell Catherine, Cornish Flora, Mclean Carl: African- Caribbean interactions with mental health services in the UK: experiences and expectations of exclusion as (re)productive of health inequalities. In: *Social Science & Medicine* 56, 2003, p 657- 669.

⁶³⁶ Interview with asylum seekers from Rathenow, Frankfurt/Oder, Crussow, Prenzlau, Guben, Cottbus, Neustadt/Dosse, Kyritz, Neuruppin during the Brandenburg Asylum seekers Conference in Potsdam from 11th to 12th June 2004

⁶³⁷ Interview with asylum seekers from Rathenow, Frankfurt/Oder, Crussow, Prenzlau, Guben, Cottbus, Neustadt/Dosse, Kyritz, Neuruppin during the Brandenburg Asylum seekers Conference in Potsdam from 11th to 12th June 2004

The asylum seekers feel discriminated and uncomfortable when ever they are separated from the rest of the people in a supermarket. Not to be able to buy what they want, this makes them suffer from emotional disorder. A situation where the salesperson does not allow an asylum seeker to choose what he or she wants makes them believe they are persecuted. They are rejected by almost everybody and the police mostly take sides with the German sales person. Some asylum seekers said, they use to think human rights practices are strong in Europe due to the pressure the European governments put on governments in the South but it is rather unfortunate that human rights are very much more infringed here than in the Southern part of the hemisphere. They feel their human rights are battered and the government is part of the move. The asylum seekers believe there is a business behind the vouchers and the smart cards in which the officials make financial gains with the companies providing these media of exchange.

5.7. The Effect of Residential Restriction Law

Article 56 has made it possible for police officers to chase “foreign looking persons” on the streets, trains, sub-ways or shops. They incriminate asylum seekers, as they want. For instance, Mr. “A” who was an asylum seeker was caught two times at the Düsseldorf train station by the Düsseldorf police officers without permission. At the second instance, the Dusseldorf police built up a drug case against him. This permitted the court to condemn Mr. A for one year eight months in prison on suspended sentence for two years. What Mr. “A” realised is that at the court session, the court of Düsseldorf supported the police and put a lot of pressure for Mr. A to accept that he was involved in drugs. Mr. A, a sub-Sahara African, who was not caught with a grain of drugs, had no chance in front of a racist judge and police officers accepted the accusation. This facilitated his release. As he was released, he filed in a case against the police and the court decision. The case was reopened in Duisburg where the one year eight months sentence condemnation was withdrawn and the case closed. Mr. “A” became a free person again. At this stage, Mr.”A” could succeed in following up the case because he already obtained a residence permit in Germany. Nevertheless, the police criminalized him because he did not have permission. This is an isolated case because there are other cases.

This law is contrary to the provisions of international Conventions, declarations and Treaties. For instance, “Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence. The above-mentioned rights shall not be subjected to any restriction except those which are

provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.”⁶³⁸ As well as, “Everyone has the right to freedom of movement and residence within the borders of each state.”⁶³⁹

Reverting to this quotation, asylum seekers are seen by the German government as a public danger that their freedom of movement has to be restricted. Everybody will like to move freely no matter where the person is found. This ideology to be a free person that has to move freely and the other ideology to create barriers around people to limit their freedom of movement is generating a lot of conflict. It was this abuse of the freedom of movement and the racist sentiments that caused some asylum seekers in Rathenow in the year 2000 to write many memoranda to address the situation and that they will like to be carried out of the state of Brandenburg⁶⁴⁰. Mr. Ziel, as the minister of Labour, Social Affairs, Health and Women Affairs, visited Rathenow to listen to the problems of the asylum seekers.

In a meeting between some of the officials in the district of Havelland, one of the asylum seekers asked the minister, “ Did asylum seekers in Germany seek asylum in the Federal Republic of Germany or in isolated districts? Why are we obliged to circulate freely only in small districts as if they are sovereign states?” the minister answered, “You sought asylum in Germany.” And the minister continued, “but Germany has a peculiar law to contain its refugees. We want to know where ever they are so that we can lay hands on them when we need them.”⁶⁴¹

This law has made the German police officers to be racist. In most of their controls they always control “foreign looking people”. The police officers usually storm places where foreigners are. In the train, they move directly to foreigners and especially black foreigners. They do not realise the fact that they are racist. And even if they do, they are proud of it. It has become a pride to the German police officers to control migrants in

⁶³⁸ Article 12 of the International Covenant on Civil and Political Rights (ICCPR), 1976

⁶³⁹ Article 13 (1) of the Universal Declaration of Human Rights, 1948

⁶⁴⁰ Kleffner Heike: Argumente gegen das Unerträgliche. Brandenburger Asylbewerber wollen raus aus der Isolation. In: Frankfurter Rundschau, No. 70, 23.03.2000.

⁶⁴¹ Ziel, Alwin, former minister of labour, social affairs, health and women affairs of the state of Brandenburg, in a visit to Rathenow in the main administrative building 2000

front of Germans to prove to the Germans that their security is guarantee. This reinforces the make belief that foreigners create the problems in their countries.

5.8. Integration in Germany

In the districts where the asylum seekers are found, most of the people in the villages already have prejudice against them stemming from their living conditions, the propaganda from the politicians and the local media. This prejudice has created a lot of racist sentiments that have made the asylum seekers vulnerable to racist attacks and prevent them from visiting the city centres of these villages or districts in which they are allocated. Examples are Frankfurt/Oder, Rathenow, Belzig, Potsdam, Ludwigsfelde, Cottbus, Guben and other parts of Brandenburg. These attacks have prevented integration between asylum seekers and most Germans in Brandenburg. Due to this, most asylum seekers wish to go to bigger cities outside Brandenburg where they could meet other people. This is very difficult because they are hardly issued permissions. The prevention of the asylum seekers to go out of their districts discourages integration.

There are many places in the bigger cities where asylum seekers without permissions are afraid to visit because of police controls. Places like parks, nightclubs, and train stations, on the streets and in the city centres. These police controls are instigating fears in the asylum seekers and therefore preventing them from meeting people. Thomas, an asylum seeker in Ludwigsfelde said, "It is a horror to always feel there is a police officer monitoring my movements. They usually prevent me from meeting people because I feel disgraced if controlled where there are many people as if I am a criminal. I prefer to stay in my asylum home in isolation."⁶⁴²

This law has made many people to think the asylum seekers are prisoners. Many of the asylum seekers say at times when they go into different places and try to engage a conversation with non-asylum seekers; the first questions are "are you an asylum seeker? If you are an asylum seeker, where is your permission to be here? Other people who are not police officers ask them, where is your passport?"⁶⁴³ In case where the asylum seekers do not possess permission or an identification paper, the non-asylum seekers always keep away from them not to bear any responsibility to have been the

⁶⁴² Interview with Thomas, an asylum seeker living in Ludwigsfelde on the 12.06.2004 in Ludwigsfelde

⁶⁴³ Interview in Berlin with an asylum seeker in Brandenburg on the 12.06.2004

person encouraging the asylum seekers to disrespect the clause of the residential restriction law. On the other hand, if some people realise a person is an asylum seeker moving with permission, they do not want to associate themselves with the asylum seeker. Thomas in the asylum home in Ludwigsfelde concluded, "The idea of the residential restriction law is racist and detrimental. We are mostly being rejected, controlled, isolated and abused. This law is actually trampling on our human rights and perpetrating racist sentiments against us. Our greatest wish is for this law to be abolished since freedom of movement is everybody's right."⁶⁴⁴

5.9. Deportation

The German asylum camps are an instrument used to isolate asylum seekers from the German public later deports them. The different methods in which the aliens' offices treat those in camps before deporting them is an infringement of their rights. The German officials do not respect international instrument prohibiting deportation or refoulement. The hiding of information from an asylum seeker to facilitate the person's deportation is an abuse of democratic principles. This is usually done when forms are given to asylum seekers in German to sign, a language the German officials never gave the opportunity for the asylum seekers to learn.

The German authorities brutalised and dehumanise the deportees to the degree that some of them are killed. Despite the death of a 30-year-old man from Sudan Aamir Ageeb on 30 May 1999, in the hands of the German Federal Border Police, the German police still use brutal means to deport. This brutality shows they do not respect human lives. This was the case with Manuel Antonio Prospeiro found in the Berlin – Köpenick deportation prison. He wanted to call his wife as the officers approached him at 22 p.m. for deportation,

"They confiscated my cell phone, I could no more speak, my feet were already chained, I could no more move, they pulled me like a dog, like an animal, I was no more a human being, they wanted to seal my mouth, come quickly, come quickly."⁶⁴⁵

⁶⁴⁴ Interview in Berlin with an asylum seeker in Brandenburg on the 12.06.2004

⁶⁴⁵ Antirassistische Initiative e.V. Dokumentationsstelle: Bundesdeutsche Flüchtlingspolitik und ihre tödlichen Folgen. Abschiebung ist Mord. Dokumentation 2000 bis 2006. Heft II, p.365.

More of the German police brutality could be seen as he was chained on the feet and they used a belt to demobilise him on his seat in the plane. As he started shouting, one of the officers stuffed his mouth with a scarf meanwhile the other officer covered his eyes. He struggled for survival until other passengers rescued him. This made the pilot of the Aeroflot plane to decide not to carry Manuel. The police brutally bent his hands behind his back, sat him on a bench with his face towards the bench and allowed him to struggle with his face towards the bench. As he was brought back to the deportation prison, he was thrown on the floor still tied up and the officers started brutalising him by kicking and blowing him with their first. The following day, he filed in a case against the brutality and the use of excessive power by the police. Police brutality is a common phenomenon with the German police force. It portrays how racist the police usually behave towards Africans and other migrants. These police officers have not yet captured that people are not in Germany because they want a beautiful time but because their lives are at stake. They have develop the spirit of superiority by false fully thinking that Germany is beautiful and richer than other countries. This what pushed to say to Manuel that; “the beautiful time in Germany is over” while brutally carrying him into the plane for deportation.

Germany does not measure the risk of torture, cruel, inhuman and degrading treatment somebody may face in his country of origin before deporting the person, this has led to imprisonment of individuals as they arrived their countries of origin. This is the case with a Chechen asylum seeker who came “to Germany, in the state of Nordrhein Westphalia at the age of 15.”⁶⁴⁶ On the 14 of November 2005 this person was deported from Sachsen to Moscow. After a very long search by family members and other refugee organisations, it was discovered that until March 2006, this person was in a prison in Grozny. He was arrested at the Moscow airport as he landed and later brought to this prison after an interview.

Germany has ratified the Refugee Convention of 1951, the Convention against Torture and the European Convention of Human Rights. In the ECHR the “threshold” of protection against real risk of torture or inhuman treatment is in some respect higher than in what is stipulated in the Geneva Convention which is based only on “well

⁶⁴⁶ Antirassistische Initiative e.V. Dokumentationsstelle: Bundesdeutsche Flüchtlingspolitik und ihre tödlichen Folgen. Abschiebung ist Mord. Dokumentation 2000 bis 2006. Heft II, p. 424.

founded fear". If a country like Germany that is a party to the ECHR could deport a person to a country where he or she will be put in prison, then Germany does not respect international instruments as well as the ECHR.

Article 3, the most important provision of the ECHR in the refugee context, provides that; "no one shall be subjected to torture or to inhuman or degrading treatment or punishment." This include removing somebody to a country where the person faces "real risk" to undergo such treatment. It should be taken into note that this does not only apply to "Convention refugees" or any other person defined in a particular or special context. But it applies to asylum seekers and even undocumented people in the state the person is found. Article 3 has given the courts much power to restrict the insensitive behaviour of certain states. That is why the courts could use it in asylum seekers and refugee protection. For instance, the state is obliged in principle to provide protection against torture, cruel, inhuman or degrading treatment or punishment by non- State actors, provided there is a real risk originating from such actors in situations in which the authorities in which "the authorities of the receiving state are not able to obviate the risk by providing appropriate protection"⁶⁴⁷

The use of force by the German authorities, obliging persons to go to their embassies, sign documents bearing declarations not understood by these persons and carry asylum seekers to illegal delegations to make interviews for identification infringe the Geneva Convention and other international and human rights instruments. These practices have been going on in Germany for quite sometime where if the asylum seekers do not conform, they will be accused by the authorities of Non Cooperation with a state authority and many sanctions are taken against them. Sanctions like reducing the social welfare to condemnation as if the person committed a crime. The use of duress by the German is a common phenomenon, which is not in conformity with international standard.

⁶⁴⁷ The H.R.L v. France judgment of 29 April 1997, Reports 1997 III, p. 1745, § 40. In this case the applicant, however, did not succeed in convincing the court of the fulfilment of these conditions.

Chapter VII. Comparative Analyses of the Three Camp Systems

As has been demonstrated in the three case studies, two of the camp systems are functioning as instruments deterring asylum seekers, refugees and migrants from coming into the EU states at a distance or preventing those already inside from having necessary access to the society, to the EU citizens. This preventive mechanism of the camps have been seen from the declaration of the then Governor of the state of Baden-Württemberg, in Germany, Lothar Späth, when he said, “the number of asylum seekers have sunk, as the African bush drum beaters have been signalled-do not go to Baden Württemberg, there, you must be put in camps.”⁶⁴⁸. This form of exclusion and isolation of unwanted persons has impacted a negative effect. Many researchers speak of the existence of a high impression of a new form of “Global Apartheid”⁶⁴⁹ This as well, has a great impact to prohibit integration of migrants already living in the different EU countries. More to that it constructs an “Enemy Image”⁶⁵⁰ of the “Third World.”

This work is concentrated on the inhuman method on how the EU handles asylum seekers and migrants in camps found within the EU territory, example, the camps in Germany where the EU states detain these individuals. There are different types of camps-reception camps, deportation camps, detention camps and transit camps. The camps are used to demonstrate that asylum seekers and migrants are equal to criminals and do not deserve any rights. This has led to their criminalisation by the different EU governments as already demonstrated above. Meanwhile in the case of the extra-territorialisation of asylum seekers and migrants, this work is not based on Ukraine and Libya as two independent countries hosting these camps but on the European exclusion and externalisation migratory policy “to prevent the mass exodus from swamping the EU.”

⁶⁴⁸ „Buschtrommel werden in Afrika signalisieren – kommt nicht nach Baden Württemberg, dort müsst ihr ins Lager.“ 1982 Lothar Späth as Governor of the state of Baden- Württemberg.

Anti-Rassismus-Büro Bremen: „Mit Sonderbus in Sonderhaus“ – Keine Lagerunterbringung von Flüchtlingen! In: Bundeskoordination gegen Lager und Abschiebung: Keine Lager! Keine Abschiebungen! Fight Racism! Bremen 1993.

⁶⁴⁹ Tesfahuney, Mekonnen: Mobility, Racism and Geopolitics. In Political Geography, Vol. 17, No.5, June 1998, p. 499-515.

⁶⁵⁰ Matthies, Volker: Neues Feindbild Dritte Welt. Verschärft sich der Nord-Süd-Konflikt? In: Aus Politik und Zeitgeschichte, B25-26/91, 1991, p.3-11.

With the latest development of the extra-territorial projects, there was an original idea of processing asylum claims to create a chance for recognised asylum applicants to enter a EU state of the applicant's choice for resettlement through a resettlement scheme. This resettlement scheme has been completely abandoned. The EU states are creating Refugees Status Determination procedure in some of these countries beyond its borders hosting these camps even though these countries do not satisfy the conditions necessary to qualify them as safe and democratic countries. The main intention behind is to qualify these countries as "safe third countries" in order to push the burden of asylum on these countries and to reduce the European costs of hosting asylum seekers.

Reverting to these arguments, an applicant does not need to come to a EU state if recognised as an asylum seeker in any of these extra-territorial camps but automatically stays in the country the applicant first filed in an asylum claim. This argument is in line with the Dublin 1 Accord of 1990, stipulating that asylum seekers have the right to file for asylum once in a territory of the EU states. This Accord does not give asylum seekers the right to choose a particular territory but emphasises that the state in which the asylum applicant first landed, or the state that issued a visa to the applicant to enter the European Community territory. It is clear that this decision of the EU countries are in complete infringement of the already weak Geneva Convention of 1951, which at least, creates some chances for asylum seekers to file in their claims in countries where they could find effective protection. In this light, the EU states are in conflict with the Geneva Convention. An instrument they all willingly gave their consents to respect. Worse of all, there are some of these countries that asylum seekers never went through before arriving Europe but they are forced back to them as "Safe Third Countries". This is a misuse of the already illegitimate "Safe Third Country" policy. Another question raised is if there is effective protection in these countries and if these countries are part of EU territories governed by European Convention on Human Rights, that one can refer to?

Originally, it was stated by the UK, UNHCR and other EU states that in order for extra-territorial camps to be operational, there should be an entente between destination countries of asylum seekers and host countries, and host countries with countries of origin of asylum seekers that if the asylum seekers are sent back to the host countries, the host countries will receive them and send them back to their countries of origin. And that the country of origin should also be willing to receive their citizens originally deported from host countries. If these agreements are concluded, then the international

camp system can be operational. Since some of these centres do exist already, one of the main focus of this section is to analyse the legality of this project under international law, the Refugee Convention of 1951 and the European Convention on Human Rights in relation to the camps existing within and out of the EU territories.”⁶⁵¹

The issue of legality and sovereignty of state come into play in this juncture. The most serious legal issue was that of state responsibility. The question is to know the state to assume the responsibility to process asylum claims in countries that are out of the EU territories. Was it going to be the countries in which these camps are found or the EU states because they do finance the camps? If one takes a look of Article 1 of the European Convention on Human Rights, the EU states cannot keep away from legal responsibility for their action abroad.

The development of the distance camps to control and manage migration portrays distinguished characteristics of the politicians of the EU states, which is the creation of a class system of “wanted” and “unwanted migrants”. This class system has finally instituted a stratification of the international society of inferior and superior people in the global migration system. Eric Neumayer in his research of the visa system of some states declared:

“A system has been put in place that is highly unequal in granting easy access to foreign spaces. The restriction to freedom and difficulties in crossing national borders turn out to be highly unevenly distributed among people with different nationalities. Facilitating the mobility of some is achieved at the expense and deterring mobility of others.”⁶⁵²

In a situation of this nature the camp system targets a particular group of persons and these are those who are leaving their countries of origin because of various humanitarian reasons-wars, economic stagnation, demoralised humanitarian reasons, environmental degradation, sickness without good health system, dictatorial regimes, social and cultural issues. Meanwhile persons like students, intellectuals, elites, investors and tourists are allowed to come in freely. This classic system of selection and prevention of persons

⁶⁵¹ Article 26 and 31 of the Vienna Convention on the Law of Treaties, 1980

⁶⁵² Neumayer, Eric: Unequal access to foreign spaces: How states use visa restrictions to regulate mobility in a globalised world. In: Transaction of the British Institute of Geographers 31, No. 1, 2006, p. 72-84.

moving have a negative impact on those coming from particular regions of the world who could not move freely. Worst of all, it does not just affect particular persons but different regions of the world. Some regions have been stigmatised as refugees producing regions while others are seen as investors and elites to the EU territory. The EU has developed a “Black List” of states whose citizens are obliged to obtain visas because of so many criteria according to the EU Council of 2003. And a “White List” for countries whose citizens are visa free into EU territories. This is mostly North-North migration.

With all the above arguments already written, I will make comparative analyses the three countries that I have selected above, the camps, the structures and functions in relation to the “unwanted migrants” living in them and the international migratory and refugees process. The basis of my analyses is to manifest the dominant repressive and preventive politics of the EU and other industrialised states in relation to forced migrants. And the nature in which they do not respect the necessary treaties and conventions guaranteeing human rights. On the contrary, how the EU states see themselves as welfare states facing challenges arising from the process of globalisation that are causing asylum seekers to make their way into their territory thereby forcing them to spend more money on them as expected. The “law makers are law breakers phenomenon.” of the EU states in abusing human rights pushes Arendt Hannah, to declare that:

“The conception of human rights based upon the assumed existence of human beings as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships-except that they were still human.”⁶⁵³

In the up coming part, I am going to compare the three countries I visited, camp systems in these countries. Different questions are to be raised that will serve as basis for my comparism. In relation to the countries I will analyse the geographical positions of these countries on the world map, their socio-political and economic conditions. In order to be vivid, similarities and differences will be raised in relation to the different elements, structures and functions qualifying the camps as instruments of inclusion and exclusion. And to answer these different questions if camps fulfil the international human rights

⁶⁵³ Arendt, Hannah: *The Origins of Totalitarianism*, New York, 1951, p.299.

Agamben, Giorgio: *Homo Sacer, Sovereign Power and Bare Life*, Stanford, California, USA, 1998, p.126.

standards, combat all forms of racism, fulfil the necessary conditions to file in asylum claims, guarantee equal place for all in the society and express necessary freedom. Before delving into the comparative analyses of the different camps, I will first of all make comparative analyses of the three countries concerned.

1. Geo-Political, Social and Economic Standards of these Countries

The main objectives of this section is to show how despite the different geographical positions of these countries on the world map, different economic and political regimes, these countries are still able to independently and unanimously function on asylum and migration issues, not driven by the respect of human rights but their individual interests and how these interests have obliged these countries to abuse and disrespect human rights and international treaties. It also portrays how authoritarian regimes are accepted by so called democratic regimes, how poor states are influenced by rich states, how poor states search for rich states to become rich and how the so called democratic states use internal laws to divert from international treaties and conventions without the challenge of the courts of these countries.

The different geographic lines between the EU states and Ukraine have almost disappeared. A country that was found in the heart of the Eastern part of Europe further away from the EU states has become a border state to the EU states and a major partner since the EU states intend to spread their anti asylum and migration wishes to manage and prevent asylum seekers and other migrants from entering the EU states. In other words, the europeanisation of other parts of the world with European values especially in asylum and migration politics. This has made Ukraine to receive asylum seekers and migrants wanting to enter the EU. The EU and Ukraine have become very close even if they still very much differ in their politics, economies and Ukraine still considered as a country of Eastern Europe without the Schengen or EU status. These differences nevertheless have been minimised and both the EU and Ukraine have jointly erected detention camps in Ukraine.

To the geographic position of Libya found in a different region of the world, in Africa, the EU has extended its influence over the Mediterranean to create an economic relationship, which has led to the construction of camps to detain asylum seekers and migrants wanting to make their way into the EU territory. According to Benita Ferrero-Waldner, Libya is considered by the EU states as "... an important player in the

Mediterranean region and in Africa, and so far has no framework of relations with the EU,⁶⁵⁴.

The strategic position of Libya found between Sub-Sahara Africa and EU states has made the EU states to off lift trade and arms embargo in order to facilitate the prevention of asylum seekers and migrants wanting to enter the EU. This made Marc Pierini to say; "... A first effect of the lifting of the arms embargo will be to allow Libya to procure on the European market the necessary equipment to immediately address the massive illegal migration phenomenon, which has become a major source of concern for both Libya and the EU. These equipments include patrol boats, helicopters and light airplanes, all-terrain vehicles, night vision equipment. Indeed, it would be simplistic to assume that the mere provision of equipment will be sufficient to deal with the complex issue of illegal migration. We are facing a common, multi-faceted human, economic and political problem of major proportions."⁶⁵⁵

Meanwhile as the general trend depicts geographically, Germany is found at the centre of the EU states and since these other countries are found at different regions of the world, asylum seekers and migrants wanting to enter Germany must transit through one of the "safe third states" bordering Germany. This has usually given Germany the *raison d'être* to reject many asylum seekers on the assumption that they transited through a safe third country before entering the country. Ralph, an asylum seeker from Cameroon told me that his asylum claim was rejected on the grounds that he passed through Netherlands to seek asylum in Germany. He said, "I have to leave the country."⁶⁵⁶

Despite the glaring differences in the geographical position of these countries on the world map that has not stopped these countries from functioning together in asylum and

⁶⁵⁴ Benita Ferrero-Waldner, EU Commissioner for External Relations and European Neighborhood Policy, told a press conference.

Info accessed from: EU to start talks with Libya on agreement to improve relations. 07:56, February 28, 2008, People's Daily Online: <http://english.peopledaily.com.cn/90001/90777/90853/6362242.html> on the 27 March 2008.

⁶⁵⁵ H.E. Mr. Marc Pierini, Ambassador, European Commission: The EU And Libya: State of Play. Address on the Conference "Libya: Opportunity and Challenge", Tripoli, 12th October 2004.

Accessed from http://www.dellby.ec.europa.eu/en/eu_and_country/bilateral_relations.htm , on the 27th of March 2008

⁶⁵⁶ Interview with Ralph from Cameroon. This interview was conducted on the 27th of March 2008 in Berlin.

migration related issues, it is as well interesting to make a comparative analysis on their socio-political situation. It is clear that these countries are different in so many aspects. Due to these differences, it is some sort of a surprise to imagine how they are unanimously engaged in asylum and migration politics on the same level.

Against the background of the political instability in Ukraine, it cannot be expected that the EU states should engage in asylum and migration politics at this stage. The absence of a strong civil society organisation has created centralisation of powers into the hands of the authorities. The society is unable to organise itself independent of the government, to challenge the ills of the government. That is one of the reasons that the establishment of the camps in Ukraine met with almost no resistance. Furthermore the voices of the people are not recognised in decision making and implementation. Though Ukraine is working towards the direction of developing a strong civil society that is not yet the case. If we have to compare the Ukrainian situation to that of Libya, one will conclude that Ukraine is a little bit advanced than Libya.

With the ban on political movements in Libya, the camp structure in Libya has come to stay since no group or party exists in the country to challenge their existence. Though Qatari claimed that it is the people ruling Libya, it is still questionable if the people decided for the camps to exist. It is very true that most of the Libyans are anti-Sub Saharan Africans that will support the fact to erect detention camps but there are no minutes of meetings or discussions with the people, which portray that the camp project was discussed by the people's democracy or in the communes. It is the decision of Mr. Qatari who has created his democracy that he himself does not apply. The European Union is aware of all these but still decides to construct a very strong union with Libya since their main drives are to stop asylum seekers and migrants from entering the EU territory and to extract as much oil as possible for their domestic use and other capitalistic tendencies.

The situation in Germany in relation to politics and political movements is some how different. The German government like other EU governments have legalised the independent existence of a strong civil society. At the same time, the bodies have been made "paper tigers" with very insignificant or no role at all. Despite the existence and struggles from these organisations, nothing has stopped the German government or other EU governments from acting against international law and other human rights treaties functioning as barometers to promote a peaceful and democratic environment.

Or by operating illegally to deport and prevent asylum seekers from coming into their country. Germany and the other EU states do it with the excuse of security and protection of the social welfare states. An example can be deduced from the asylum act of 1992 instituted by the German government determining the asylum procedure.

With the above analyses of the geographical and socio-political aspects of these different countries, it will be legitimate to make analysis on the economic situation in order to understand the different behavioural cultures and parameters influencing these countries.

As already mentioned, Ukraine has a weak economy. The consequences of this weak economy on Ukraine is that the rich countries like the EU states use this weak economic stance to impose their migration wish after offering an insignificant sum of money with the promise of rebuilding the economy. This is usually accompanied with the institutionalisation of the abuse of human rights like the inhuman detention camps found all over the country. On the other side of the coin, Ukraine stretches her hands to these rich states to come to her with what ever conditions since her main intention is to come out from the post Soviet Union poverty by all means necessary and in future to become a member state of the EU.

The case of Libya is different to that of Ukraine. The scramble for oil in Libya in recent days has made the EU states to block the transiting of asylum seekers and other migrants wanting to enter the EU territory in search of security. The EU is not wooing Libya with chicken feed money to construct camps but Libya is afraid of loosing again big contracts with mighty European oil companies as was the case during the era of air and arms embargo. Due to this, Libya has to construct the camps to satisfy her European counterparts to keep on exploiting the oil in the country at the expense of asylum seekers and other migrants. Both the EU states and Libya have become blind to human rights treaties and other international Conventions because of their capitalistic tendencies.

More to the analysis, the German economy in comparison with the above two countries, is very strong and better organised internationally. It is because of this strength that she has become “the fish that is swallowing the sea” by influencing all the other EU states in almost all its policies. Germany has constructed the scaring philosophy of asylum seekers coming to take away their wealth that can affect their economy. This strong

economy has created a philosophy of only working with those who can help the economy to always stay strong and not those who though cannot destroy the economy but are not wanted.

To summarise this part, the comparative analyses of these three countries on the above different elements in which there are differences and some similarities, it is worthwhile to say that these countries are behaving in almost the very manner when it comes to the issue of migrants and asylum seekers. There is no progressive state but an issue of interest. We realise that the cry of democracy depends on how much gains a state can make from the other. The poor states trying to get money from the rich and the rich trying to exploit the poor to push forward their wishful policies. To Libya, as already said, she wants to come back on the international scene as a player after a very long period of isolation from part of the world. And she needed the EU and American multi-billion oil companies to buy her oil. Meanwhile, for Ukraine, she is clamouring to be part of the EU in order to be part of the international player as well as to become strong in the market economy. She also wishes to receive financial aids from the EU to rebuild her dilapidated post Soviet Union economy and structures. All this is done at the background of serious disrespect of human rights and other international conventions or laws, which Ukraine just signed not long ago.

This aspect of comparative analyses of the different countries on their geographical, socio-political and economic stance has put forward that there some differences and similarities guiding these countries but which did not stop them from acting almost the same. The next focus is on elements found in these countries and methods on how these countries operate internally in relation to asylum seekers and migrants.

2. Nature of Infrastructure

The asylum seekers, refugees and migrants are brought into different types of accommodation in these three countries. In Ukraine, the detainees are placed in closed camps that need particular permission which are not easily obtained from the ministry of defence for visitors to go into. These closed camps are military camps, for instance, at Chop, Lutsk and Uzhhorod, or former military camps, for instance, the camp in Mokachevo/Pavschino. This specific camp is found deep in the forest, surrounded by military officers as guards. The original concept of these camps was for the military not for civilians. Today, migrants civilians are forced to be brought here with all the negative

consequences because there is no other choice and as a means to deter migration into the country.

The infrastructure has a very low capacity to accommodate the detainees to an extent that the human rights of these detainees are as well detained. Originally, these camps were intended for a defined number of people than the numbers of asylum seekers, refugees and detainees incarcerated in them today. In the different detention centres, the number of asylum seekers accommodated is usually quadrupled.

“In many cases asylum- seekers are detained jointly with other foreigners and nationals due to the lack of sufficient detention cells. In Mukachevo/Pavshino, detention facilities do not provide for the joint accommodation of family members.”⁶⁵⁷

In Libya, the situation is negatively some how different but there are some aspects that are similar to the camps in Ukraine. The main difference is that the camps in Libya are not found in the forest because Libya is a desert country. What are reminiscent of these camps are the high walls surrounded with barbed wires. The camps are surrounded by frightful looking military or police officers circulating every where just like in Ukraine to watch who comes in or go out. Some of the camps are found in the city centre, like the El- Fatah in Tripoli. In these camps, there are very limited facilities like taps, toilets, sleeping spaces because these camps like in Ukraine were intended for a defined number of military personels but the number of asylum seekers, refugees and migrants surpass the defined number the camps were originally constructed to accommodate. Asylum seekers are forced to sleep on the floor due to non-existence of beds. There is usual congestion. All the cells are unable to contain the number of detainees obliged to live in.

The drastic shortage of enough infrastructures has contributed to the separation of families in Ukraine and Libya. The officials in both countries do not usually pay attention if there is a family. What they do is to disperse the arrestees into different camps. This attitude of tearing families where each member of the family suffers from psychological

⁶⁵⁷ Draft from the UNHCR: Strengthening Protection Capacity Project, Analysis of Gaps in Refugee Protection Capacity Ukraine, May 2006, p.10.

torture of not knowing where the other member is found and in which conditions is an abuse of the rights of family.

In these two countries, the issue of choice of residence when arrested is utopia.

The arrestees are brought and locked up for a long period of time in closed camps. This functions as an exclusive mechanism because during this period, the detainees do not have the possibility to go out. The only instance that these persons can search for a residence is when they are released after a series of unsuccessful attempts to deport them. During this period they are obliged to live with either friends or relatives in very poor conditions at the poor areas of the outskirts of the towns since the governments of these countries do not subsidise them. In the case of Ukraine, it is a little bit better because the UNHCR gives \$45 US per month. This permits about fifteen people to rent a small apartment of very poor conditions.

In Germany, the situation is a little bit different. Though the German government is experienced in asylum issues and in camps, in detaining or hosting asylum seekers, the camp officials in collaboration with state authorities, consciously create an artificial scarcity of infrastructure that finally leads to congestion in asylum homes. There are so many people packed in one room not because there is no other alternative but as a kind of punitive measure to deter other asylum seekers not yet in the country from coming into the country as well as to punish those already in the country. The asylum seekers are either put into former military camps, containers or warehouses with very ugly architectural work like in Ukraine and Libya. Most of these camps are found in forests or industrial areas excluded from the German population. The infrastructure is usually barren, lack of common rooms where the asylum seekers could come together for their social activities. In camps where these rooms are found, it is usually difficult for the asylum seekers to have access into them. The camp administrators keep the keys and select what the asylum seekers are supposed to do in these rooms. There is no freedom to enter the room as the asylum seekers want. In most of the camps like in the state of Brandenburg, there are usually no sport grounds for those who want to do sports like in Ukraine and Libya. On the contrary, there are signboards with warning of land mines around the asylum camps. This lack of facilities is a means to force them leave the country. In some of the asylum camps the home administrators have introduced lists to control those who live at the home and who do not. If the home administrators have gone home for the day after work, the guards take over and exhibit their own power on asylum seekers as well. The guards become very aggressive and refuse visitors of asylum

seekers from getting into the rooms. Almost everybody involved in the asylum process, from the aliens offices, social welfare workers, to the police officers are strongly cooperating to make life very difficult to asylum seekers and other migrants.

Due to this lack of adequate accommodation facilities, asylum seekers and migrants without documents crossing the borders, arrested in the country or attempting to enter any of the EU states are apprehended and detained for excessively long period in sub-standard conditions causing many of them to develop different types of diseases. The shortage of sufficient infrastructure that leads to detention of immigrants into military camps is a form of torture because it reminds most of the detainees, especially those fleeing from wars to think they are in another war. The ugly architectural structures and continues the surveillance by military officers give some of them the impression that they are prisoners of war. Worse of all, the absence of certain facilities like beds or a peaceful sleep at night make them to feel they have lost their sense of direction or purpose of life. This lack of enough infrastructures makes the people to be concentrated in single rooms like in the era of the German concentration camps. This as some of the detainees said, they have been dehumanised. If one talks of human rights, it cannot be said the authorities value their rights.

In some of the regions, the migration services exist on pieces of papers without offices. It is said, "in some of the regions the migration service does not have offices, phone lines, computers, or any means to visit asylum seekers in detention. We have no money, no means of transportation, no staff, no interpreter; we can't organise interviews."⁶⁵⁸

In Ukraine, the lack of sufficient trained staff to coordinate the affairs of asylum seekers is an issue to be taken serious. This has made it possible for border guards with military training to become part of the asylum and migration procedure. Victor, a border guard at Lutsk exclaimed that:

"We are not migration officers. We do not see why border guards should be involved in migratory duties. It would have been better stated that when the border guards

⁶⁵⁸ Human Rights Watch: Ukraine: On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union, Human Rights Watch Vol. 17 No 8 (D), November 2005, p. 21.

apprehend undocumented migrants trying to cross the border to the EU states, should pass over these persons to the migration service.⁶⁵⁹

Though some organisation like HIAS and CARITAS Austria are training officials to take up certain functions, the Ukrainian government usually transfers these officials to other functions needed by the state as the country is still restructuring her self from the former Soviet Union system to the Western system. This has made the continues lack of staff. There are other parts that the services of HIAS and CARITAS Austria do not reach. In such places, only military officers without knowledge on asylum or migration do the jobs. Due to the lack of enough knowledge of the culture of asylum and qualified staff members, the government has not put special services to identify the urgent protection needs of asylum seekers and refugees. Though the UNHCR and some of its partners could identify and direct some of these victims to the appropriate offices, not all the asylum seekers and refugees benefit from these services. The greater majority of asylum seekers and refugees do not have information on how the country functions, others are detained in asylum camps that prevent them from having contacts with the UNHCR and meanwhile, some are found in other regions where the influence of the UNHCR and its partners are not felt.

In Ukraine, there is at least an ineffective migration service for asylum issues. This does not exist in Libya. The Libya government does not see asylum as a problem to institute offices, telephones and other office equipments to process asylum issues. In Libya as in Ukraine, the detainees are found in closed detention camps without any common rooms for relaxation or play ground. They are constantly inactive from the first day of their arrest until they are released. These barriers mean that few services are designed to meet the needs of asylum seekers and other migrant detainees. That is why there is the existence of patchy and unlimited scale of services.

In Libya, there is a higher degree of ignorance in the aspect of asylum than in Ukraine. At least, in Ukraine, there are some Western institutions training some of the officials to understand the whole matrix of asylum as was instituted in the West, a thing that does not exist in Libya. Libya has never accepted the fact that there are asylum seekers in the country except of the Palestinian refugees. The country is not a signature of the Geneva

⁶⁵⁹ Interview with V, a military officer at Lutsk facility on the 12.05 2006 in Lutsk

Convention of 1951 and is not making any effort to incorporate the asylum system in its structure since they do not see it as a problem.

These above mentioned points have made the procedure in a way that untrained border guards and police officers are involved in the field of asylum and migration. They detain everybody wanting to enter the country without regular documents, moving within the country or wanting to leave the country to any of the EU states. All the migrants are considered in Libya as "Economic Migrants". There is actually nothing to talk about shortage of staff in Libya in relation to asylum matters because the department does not exist. Nevertheless, the International Organisation for Migration to manage migrants in Libya is building camps. A country that has refused to recognise the small bureau of the UNHCR found on its territory. To Libya, this is an instrument of the West and should not exist in the country. One common factor in Libya and Ukraine is that the camps being built are a project of the International Organisation for Migration. This institution, which does not have a mandate on asylum issues and at the same time is not a human rights organisation, is fully involved in building camps at the external borders of Europe and other regions of the world to deter asylum seekers, refugees and other migrants from entering the EU states. Its status is undefined but it is found in these two countries to foster migration management with the use of camps.

In Ukraine there is at least certain areas that some partners of the UNHCR do provide certain services. If the services are not enough, or do not cover a broad spectrum of the country as it is the case, they are at least existing something. In Libya, these services do completely not exist.

There are no services to take care of special needs of asylum seekers or other migrants, to supply them with necessary information and are not allowed to have contact with other organisations like the UNHCR.

In Germany, there are trained staff members in asylum related issues but it is unfortunate that at the different levels, the officials work in favour of the government against asylum seekers. At the start of the whole procedure, if positive decisions are reached by the Branch office of the Federal Office for the Recognition of Refugees, these decisions are challenged by another office controlled by the ministry of the interior known as, Federal Commission for Asylum Issues. With such a method of operation, it is clear that many refugees are rejected. The German government does not respect necessary international conventions and its constitutional rights. The independence of

the Federal Office for the Recognition of Foreign Refugees does not exist. Asylum issues are depending more on political decisions than on humanitarian reasons. This has made asylum to lose its importance in Germany and other Western states. At the same time the German government like other Western governments have decided to minimise and destroy existing international agreements creating international stability, peace, security and assistance like the Geneva Convention, Convention on the Rights of the Child and many others.

Asylum seekers are usually maltreated and refused almost all their rights. Worse of all, a black asylum seeker. The officials usually use this strategy at times to create class and discrimination amongst asylum seekers. Those from East European countries are at times more favoured than sub-Saharan Africans. All these behaviours of the German authorities, are to create a certain artificial lack of infrastructure and not that the infrastructure is in reality lacking.

3. Specific Problems faced by Women and Children

There is a wanton Sexual and Gender Based Violence in these two countries. In Ukraine and Libya, the awareness that refugee women and other female detainees have specific problems different from men is not yet created. Until today women and men are treated in the same manner, searched by men, locked up in the same camps, the military officers always try to have sexual intercourse with them, the women are beaten and their special needs go unrecognised, for instance, during their menstrual period, nobody takes the initiative to provide pads. Other needs like health services and education are not taken into consideration. More needs not provided are, women are not trained to their rights and the issue of gender discrimination is not addressed in their daily lives. Pregnant women do not receive health education, or receive prenatal care.

In Germany, like in Ukraine and Libya, the women do not have any privacy. If one is on her menses, the others know since they are in one room. And the women are suffering from limited resources because of their poor economic stance to provide certain goods urgently needed by women. This has brought dramatic consequences, as many goods and services are beyond their reach. The hard living conditions have driven many women into a situation to search for money as a survival strategy, to purchase basic necessities. This is done notwithstanding the risk of contacting certain transmissible diseases like HIV/AIDS.

Women are usually victims of Sexual and Gender Based Violence (SGBV) in these three countries. In Germany, since it is difficult for asylum seekers to leave their jurisdictions to other areas where they could build up comfortable relationships, some of the women become victims of some of the men. After a while of living together, some of the men start abusing some of the women sexually. This very report was made by the UNHCR in Ukraine where the women are abused sexually after a long stay with the men in these camps. Libya is no exception since the abuse is not only from other male detainees but from the border guards as well.

For the case of children, the Convention of the Rights of the Child is constantly and permanently abused in Libya and Ukraine. Children are incarcerated with adults in one detention room, handcuffed and transported under very poor conditions when caught at the borders with their parents or from one prison to the next. They are forced to eat with adult. Children do not go to school. The children are locked up without sunlight, fresh air or play ground with their parents and other adults in a congested room that the children are obliged to sit on the parents or always carried by somebody else. At times at night when everybody is sleeping the children will urinate on the floor, which will spill on the bodies of others. The children were obliged to do that because there was usually no space to move to the toilet. To go to the toilet means jumping over other people what most children could not do. Children are deported with parents in very inhuman manner.

In Germany many of the asylum homes do not provide playground for asylum children living in these homes. These children are distressed children who have suffered from a lot of violence and need much care to come back to their selves as a form of support. This can be got from play and recreation. Just as in Ukraine and Libya where these facilities are lacking, Germany often does not provide them as well. Communal rooms where children could meet and play are as well lacking. They are forced to be with their parents. Most of these distressed children find it difficult to communicate with adults in what has happened in their lives.

There is lack of structure that can help distressed children as asylum seekers to talk their experiences with adults who can understand and support them and to express their feelings in a cultural way. Children will always like to talk their problems and then find a more comfortable way of living with them. This structure to help out distressed children is lacking in Germany as well as in Ukraine and Libya.

4. Detention

This scheme of TPCs and RPAs of EU states and UNHCR has broadened the scope of detention and the abuse of human rights of migrants, asylum seekers and refugees as seen in the different camps within and beyond the EU borders. UNHCR in its Guidelines 2 on Detention of Asylum Seekers, said:

“The right to liberty is a fundamental right, recognised in all the major human rights instruments, both at global and regional levels. The right to seek asylum is, equally, recognised as a basic human right. The act of seeking asylum can therefore not be considered an offence or a crime. Consideration should be given to the fact that asylum seekers may already have suffered some form of persecution or other hardship in their countries of origin and should be protected against any form of harsh treatment. As a general rule, asylum seekers should not be detained.”⁶⁶⁰

Here, the UNHCR in its Guidelines is condemning detention and counselling that should not be used as an instrument to frighten asylum seekers from seeking asylum and also that detention should not be used as a disciplinary measure against those who cross the borders to seek asylum.

Detention of any kind and anywhere breaches the European Convention of Human Rights. Detention prohibits asylum seekers from challenging the decision to detain them in front of the necessary court of law and authorities, and will not be able to have access to legal assistance, other form of counselling.

It is an infringement of international law if refugees are detained when they have not been convicted or committed a crime as stipulated by article 5 (1) of the ECHR. Before a refugee is condemned he or she must go through a rational judicial procedure and he should be given the chance to make an appeal if he or she finds the detention unlawful. Meanwhile Article 5 (4) states that:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a

⁶⁶⁰ UNHCR Guideline 2 published in Geneva, January 1996

court and his release ordered if the detention is not lawful.” According to international human rights law, arbitrary detention is condemned.

International instruments condemned the detention of asylum seekers as can be seen in Article 31 of the 1951 Convention, which states that government

“Shall not impose penalties, on account of their illegal entry or presence, or refugees who, coming directly from a territory where their life or freedom was threatened...enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”. Article 31 (2) stipulates “the contracting states shall not apply to the movements of such refugee restrictions other than those which are necessary.”⁶⁶¹

Though it is an accepted principle of international law that asylum seekers should not in general, be detained, the Refugee Convention does permit the states to detain asylum seekers in certain limited circumstances. The circumstances are “in time of war, or other grave and exceptional circumstances,” states may take provisional measures to detain asylum seekers, pending the determination that the person is in fact is a refugee and that the continuance of such measures is necessary in the interest of national security” Meanwhile, the UNHCR guide line stipulates, circumstances which can lead to the detention of asylum seeker: (i) to verify identity; (ii) to determine the elements on which the claim for refugee status or asylum is based; (iii) in cases where refugees or 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 or public order. The UNHCR guidelines cautioned that:

“This exception ...cannot be used to justify detention for entire status determination procedure, or for an unlimited period of time. The Guideline sanction any other reason used to detain asylum seekers, as contrary to the principle of international law. The Guide line goes further to stress that “detention should only be imposed where it is necessary and reasonable to do so and without discrimination. It should be proportional to the end to be achieved and for a minimal period.”

⁶⁶¹ Convention Relating to the Status of Refugees, Done at Geneva on 28 July 1951, Entry into force: 22 April 1954, in accordance with Article 43, Text: United Nations Treaty Series No. 2545. Vol. 189, p. 137

That notwithstanding, Ukraine detention of asylum seekers, refugees and other migrants infringes the clauses of the European Convention of Human Rights and the main intention is to deter the coming into the country of other asylum seekers. In order to make things worse, in Chop detention centre, there is a special room without ventilation and sanitary conditions where detainees are being kept as a punitive act if the detainees do not respect repressive orders of the detention centres.

The right to seek asylum is denied to so many who are detained in the Ukraine detention centres. Many of them do not have the idea that there is a UNHCR office because the officials are not interested that they should be informed. Worse of all, the asylum procedure is weakened in the aspect of “manifestly unfounded” grounds claim which is based on passing a test. In this aspect there is a test given to asylum seekers on a completed questionnaire and an interview and if the asylum applicant does not succeed, he or she is not allowed to enter the Refugee Status Determination (RSD) procedure. It should be noted that asylum seekers are people who are traumatised due to the accumulation of many negative experiences. The idea to make a test is really an abuse of the Geneva Convention, which does not state that, and at the same time it is a disrespect of the international standards. The UNHCR Ukraine confirms that the use of questionnaire and interviews as test have made the majority of asylum applications to be rejected at this “stage as a criteria used in making this decision are not in accordance with international standards”.⁶⁶²

The camps are used to prepare the deportation documents of the detainees and not to allow them have access to live in the country as asylum seekers. This situation is really worse with Chechens who are deported without remorse since it is very easy for the officials to get their deportation documents. The right to seek asylum found on the UNHCR Guidelines and other international instruments is blatantly abused by refusing the Chechens and other detainees from having access to asylum procedure. More to that, asylum seekers are still detained even after haven filed in their asylum claims;

⁶⁶² Draft from the UNHCR: Strengthening Protection Capacity Project, Analysis of Gaps in Refugee Protection Capacity Ukraine, May 2006, p.23.

“The effect of reorganisation has been disastrous for refugee protection. On June 15,2005, for example, four Chechen men were refouled to Russia, despite being registered with the UNHCR Kiev. The men were unable to register with the Kiev City Migration Service, which has been shut down because of reorganisation, leaving them without valid government-issued asylum seeker certificates. The four were subsequently apprehended, fined for not having appropriate registration stamps, and deported to Russia”.⁶⁶³

Though article 9 of the Ukrainian law on refugees prohibits the detention of any applicant who has already filed in the asylum claim, on the contrary, this is not the case. The lack of knowledge of what asylum is, is playing a major role for the detention of many of the asylum applicants. As Victor in Lutsk said, they keep the people as long as possible until their identity is discovered. With such a declaration, many cases have led to unlimited detention. The asylum seekers and other detainees are never informed of the reason why they are detained and for how long the detention will continue. More to that they cannot challenge their detention in front of the court and do not have the legal assistance to assist them. At times the UNHCR and its partners can assist some asylum seekers but not in all the cases. In regions where these bodies are lacking, it becomes worse for the detainees.

Though the condition is not very encouraging due to lack of knowledge and enough experienced staff in asylum matters, the Ukrainian government has at least instituted a Refugee Status Determination. It may be with time things will change. At the moment, one cannot predict when such changes will come because of the complex nature inherited from the former Soviet Union that needs to be destroyed in order to create a healthy atmosphere for an asylum system as well as the ill intention of the authorities. Due to this lack of uncertainty, it is not yet the right moment for Ukraine to receive asylum seekers and refugees since the authorities are still inexperienced.

There is no consideration given to the fact that detainees have already suffered some sort of torture before arriving this country. That is why many authorities do not even care

⁶⁶³ Human Rights Watch: Ukraine: On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union, Human Rights Watch Vol. 17 No 8 (D), November 2005, p. 21.

to transfer the documents of those who have already filed in their asylum claims as mentioned by the UNHCR and human rights lawyers, when they say;

“...In some facilities (particularly in Pashing centre for men) the transfer of applications depends on the good will of the border guard officials or the payment of bribes. A human rights lawyer said that the border guards frequently fail to forward applications and then claim that the applications were lost. How can you have forty-two applications lost.”⁶⁶⁴

The case of Libya is totally different. As earlier said, Libya does not have any structure to recognise asylum seekers. This has led to very long detention of prospective asylum seekers. It is still not clear how the EU states came to the idea to deal with Libya on asylum matters, a country that is not a party to the Geneva Convention of 1951 and its Protocol of 1967. Just like in Ukraine, Libyan authorities do not inform the detainees who need asylum of the UNHCR bureau in the country. One of the reasons is that this office is not recognised by the Libyan government. The other reason is that a great majority of Libyan authorities are ignorant of the services of the UNHCR. These reasons have made it possible for many who needed asylum to be detained for a very long period of time. Libya until this date does not believe that there are asylum seekers existing in their country. As echoed by Muhammad al-Ramalli, Libya does not have a law for asylum because the problem is not there. In Ukraine, at least there is a law prohibiting asylum seekers as criminals. Even if this law is not respected, as it is the case, one at least exists. In Libya, there is no law of such nature. That is why almost everybody who enters the country is considered as a criminal and detained for an excessive long while in disrespect of international instruments condemning the fact of detaining any prospective asylum seeker. The only migrant who have the status of asylum seekers are the Palestinian because the League of Arab States (LAS) made it possible for all Arab states to recognise and assist the Palestinians.

Like in the Ukraine, Libyan asylum seekers and other migrant detainees are not given reasons of why they are detained or information of how long the detention is going to take. In both countries, there is no way in which a detainee is able to challenge the

⁶⁶⁴ Human Rights Watch: Ukraine: On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union, Human Rights Watch Vol. 17 No 8 (D), November 2005, p. 27.

detention in front of the court. Usually, they are not provided with legal assistance. Asylum seekers are held with convicted criminals and are usually detained with minors below the age of 18 years.

In Germany, detention is practised as well. This can be found in a report to the FASTI (Fédération des Associations de Solidorite avec les Travailleurs Immigrés) conference where Helmut Dietrich of the Forschungsgesellschaft Flucht und Migration (FFM) said:

“...After the fall of the Berlin wall, in 1992, the first detention centre was opened; more followed; the largest, at Büren, has 600 places; another, at Berlin-Grünau, has 330. Most failed asylum seekers and other “illegals” are detained “prior to expulsion”. By 1997, some 25,000 persons were detained per year, for maximum of 48 hours, in inspection centres at the German-Polish frontier and then expelled, with no opportunity to contact lawyer and then put their case. Some 4,000-5,000 people a year are detained at German airports with no clear time limit, and sometimes for several months. Some 18,000-20,000 people are detained prior to expulsion, about 2,000 of them at any one time, mostly in some 100 prisons and detention centres, some run by the police or by private companies. Detention may last up to six months and for a maximum of 18 months; most people who are expelled are detained first, but over 10 per cent of them have to be freed because the authorities fail to expel them. There is a token judicial process, with judges signing requests for detention by the police and immigration services without examining cases.”⁶⁶⁵

Unlike in Ukraine and Libya, in Germany, detainees are able to communicate with the outside world and are allowed to have regular visits until a particular hour of the day. Nevertheless, this does not cancel the fact that they do not suffer from cruel and inhuman treatment like in the case of Manuel Antonio Prospeiro, who was chained and thrown on the floor in 2006 in Berlin. Detainees are forced to reveal their identities and to sign documents that can facilitate the possibility to obtain a travel document from their embassies of origin. Detainees are tied up with chains from their deportation cells and their mouths taped risking the lives of many. The behaviours of German border police portray racist behaviours and brutality that is not expected to happen in democratic

⁶⁶⁵ Hayter Teresa: *Open Borders. The Case Against Immigration Controls*. London: Pluto Press, Second Edition, 2004, p.114.

declared countries. Antonio Manuel has taken the German border guards to court for institutionalised brutality that almost took away his life if not rescued by other passengers in an airplane. These detention practices are a strategy to force foreign embassies to give travel documents for their citizens to be deported and also to send a message back home to the other asylum seekers and migrants wanting to come to any of the EU states not to come to Europe. That if they come to Europe they will be detained and maltreated in camps and detention centres.

5. Communications, Interpretation and Counselling

In the camps of Ukraine and Libya, there is usually lack of communication with the outside world. The detainees could not communicate with their family members, friends or lawyers. This does not matter how long a person is detained. In Pavschino, in Ukraine, there is a lone telephone booth for over two hundred detainees. In Libya, there is no such possibility. There are many detainees who have been there for more than two years without anybody knowing where they are.

In Ukraine the asylum seekers and refugees usually do not have access to interpreters, at times the UNHCR and its NGO partners provide some interpreters. This is in a limited region and to a limited number. A majority of the detainees do not usually have this opportunity. Even if they have to go to courts. Usually, detainees who understand Russian is favoured but not those they have extra services or treatment but could understand the Ukrainian language better. In the case of Libya, the situation is worse because none of the detainees has the possibility to be provided with interpreter from the UNHCR or other NGOs. Usually, detainees from Chad or Sudan who understand Arab and another language assist those who do not understand or speak. If there is nobody to provide such assistance, the detainee will have to be condemned without he or she knowing what is going on. Or will spend a longer time in detention.

Another aspect that the detainees in Ukraine and Libya face in communication is lack of access to information. This leads to lack of awareness of other services. In Ukraine, at the region where the UNHCR and other NGOs partners are found, they try to provide information. Unfortunately, these services are only provided to a small number of asylum seekers and not to a large part of the country. In Libya, the whole situation is different. There is no organisation working to see that detainees receive information. There is a total black out in detention facilities. Except of the El-Felah detention camp at the city centre of Tripoli, the UNHCR has not got access to the other detention facilities.

In Germany, since the camps are opened camps, the asylum seekers have access to the communicative world, but they usually trek for long distances to telephone due to the fact that they do not have telephone facilities in most of the camps and are not permitted to institute a land line. What most of the asylum seekers do is to possess a cellular phone so that their family members and other friends could reach them. It has been more difficult for elderly asylum seekers to trek than the younger ones. This has caused them to be more isolated. They are usually trapped at home. And the younger asylum seekers have always been victims of racism. Racist Germans usually beats them as they try to enter these small villages closer to their camps to telephone. Cellular phones on the one hand have improved the situation of asylum seeker concerning isolation and exclusion. But on the other hand, this is some sort of artificial inclusion. They are still excluded either in the forests, industrial zones and lodged in containers. They can always receive some calls but cannot call because they do not have the money to buy the expensive phone cards.

In Germany, there is the possibility to obtain information but it is always very difficult for the asylum seekers to reach these offices where the people bearing the information are found. Another point is that the information is usually found in German. A language that the detainees or asylum seekers do not understand. Many of the people working in these information offices speak strictly German. This communication barrier has prohibited asylum seekers from obtaining information.

6. Discrimination

According to many international instruments, discrimination of all kinds is strictly condemned. The ECHR and ICCPR obliged contracting state parties to secure the enjoyment of rights without discrimination on any ground. Particular attention was paid in this scheme on the grounds of national origin or other status.

The form of discrimination I encountered on the field is the Continuous harassment of asylum seekers, refugees and other migrants by the Ukrainian police and other law enforcement officers. In relation to the Chechens, there is a very strong xenophobia against asylum seekers from Chechnya. This is justified by the fact that the Chechens are seriously beaten and immediately deported because of their nationality. Though the border guards and other officials always try to prohibit detainees from filing in an asylum claim or usually delay the dossiers, they are more stringent with detainees from Chechnya in detention camps. This is an anti Chechnya attitude based on xenophobic

discrimination because of their origin. Most of the Ukrainians consider themselves superior to all other foreign migrants or detainees and this alone, fuels racism and other forms of discriminative tendencies mounting in the country in recent days. The discrimination criminalizes the migrants by the government and at the same time, migrants are used as a target group to deceive the citizens that unemployment is due to their presence. More arguments developed by the government to institute the camps are to justify the fact that their culture is in danger, if mixed up with other cultures. This strategy used by the government officials go to build up the nationalistic tendencies in the people to believe that they have a superior culture that needs to be defended.

This detention of asylum seekers and migrants in Ukraine has strengthened the belief in the minds of the people that asylum seekers and other migrants are the main sources of their problems. Detention justifies the already existing racist prejudice mythology that immigrants are the origin of diseases, unemployment, crimes and poverty. The detention and continues propaganda in the media and by the politicians have developed hostility and prejudices against migrant population as confirmed by the UNHCR Ukraine.

Beatings of asylum seekers and other migrants are very rampant in detention centres. This maltreatment is exercised on those who are no more in detention facilities as well. In Schulaska, a commercial section of Kiev where many African asylum seekers and other nationalities are concentrated, many of them complained of police harassment, torture and extortion. M. T. an asylum seeker from Nigeria disclosed, "The police always pop into the market where we are selling second hand goods and either arrest everybody or who ever they meet. In such an action, in order to be set free one has to bribe. The bribery situation is too rampant and too heavy for us."

If an asylum seeker is unable to bribe, he or she will be landed in a cell for an undefined period of time. Most of these arrests are done when the identity papers of asylum seekers expire. Since it usually takes a long time, close to a month to reinstitution a new one, most asylum seekers become undocumented. Though the UNHCR Ukraine has instituted a system to provide the asylum seekers with temporary documents during this period, but the police officers do not recognise it. They claim the document of UNHCR could not be recognised in Ukrainian territory since it is not from their government. This could be seen where a representative of the ministry of Internal Affairs said,

“We don’t consider these certificates as legal in the territory of Ukraine... They (UNHCR) lobbied for these documents to be eligible...”

In Libya, the form of discrimination I encountered was stronger than in Ukraine. There are certain citizens that are greatly discriminated upon by the Libyans and their government officials because of their nationalities. Citizens from countries like Nigeria, Ghana and Eritrea are constantly arrested maltreated and deported because of their nationalities. Citizens from the above countries are always very afraid to identify themselves as coming from these countries.

Libyan officials, like in Ukraine, spread the myth that diseases like AIDS is brought by asylum seekers and other migrants from sub-Sahara Africa. And that there is unemployment and higher waves of crimes committed by these foreigners. All these negative media campaigns are done to institute justification for the government to detain immigrants. It has as well increased the high rate of racism and other forms of discrimination existing in the country. Politicians declare that it is to satisfy the pressure coming from the public that they have to create and maintain the detention centres as instruments to fight the spread of diseases and reduce the criminal rate. But as earlier said, it is an issue operating from two different angles. The public usually react from what the media and their politicians inform them.

Another very strong form of discrimination found in the Libyan detention facilities, which is not found in Ukraine is on the basis of religion. The non-Islams are highly discriminated, seen as sinners and in certain facilities forced to change their religion to Islam. This form of discrimination ties with the fact that the Libyan government has always propagated that all the Libyans have one origin. And that anybody who does not believe in Islam is a sinner “Shitan.” Detainees are forced to renounce and abuse Christianity as an evil belief. An issue if resisted, will earn the person some beatings and other forms of maltreatment. This level of religious intolerance has worsened the treatment of non-Islamic detainees. A thing that does not exist in Ukraine, a strong Christian Orthodox country.

The discrimination of asylum seekers and other migrants is not only limited in these two countries. Germany, a country that has had a long experience of asylum seekers and other migrants still manifests a strong wave of racial discrimination as in Ukraine and Libya. In 1981, the then Governor of Baden Württemberg, Lothar Späth said that:“

African drum beaters have been signalled, do not come to Baden Württemberg, else you will be put in camps". This declaration has imprinted indelible strong waves of racism against Africans living in Germany in all works of life. It also shows how deep racism is imprinted in Germany, when governors are able to say such racist slur and go Scot-free without any critic from the media, other politicians and a large quarter of the civil society. Africans are attacked daily because they are seen to be worthless people in the society who are good for the camps. Many Germans always ask Africans why they are in Germany. In course of a racist attack against an African, the racists mostly say Germany for Germans and Africa for Africans. The word of Lothar Späth until today has a destructive and poisonous effect in the society. More to this declaration of Lothar Späth, is as well negatively affecting other migrants living in this country. Since Lothar Späth made this statement, most Germans do believe that those living in camps are inferior or that a camp is a place for people without rights, rejected from the society, this has developed racist attacks against asylum seekers and some of the camps. This is an example of the attack of the camps in the late 90s in Rostock with petrol bombs and Molotov cocktails by some racist Germans. Another racist slur came from the former minister of the interior, Otto Schily when he said, "it is enough...Germany cannot more cope with the continuous in take of foreigners."⁶⁶⁶ After this declaration, he went further to make another hard declaration to show his intention that he does not want migrants and asylum seekers into Germany. Due to that he said, "The boat is full."⁶⁶⁷

The camp system is discriminating between whites and other people who look "foreign". Many Germans usually consider most of the migrants from the first sight as camp dwellers, those who take the jobs of Germans or those who want to make the German culture to disappear. Behind the logic of this government, one of the main objectives is to assure the fact that their culture is not polluted by other cultures. That is why authorities responsible of the asylum homes in Perleberg said, the asylum seekers can better

⁶⁶⁶ Otto Schily: " Deutschland könne 'keinen weiteren Zugang von Ausländern verkraften' , die 'Grenzen der Belastbarkeit seien bereits überschritten' ."

"Das Boot ist voll."

WAZ, 16. November 1998, Ruhrnachrichten, 16. November 1998, Frankfurter Rundschau, 16. November 1998, Berliner Tagesspiel, zitiert nach: Süddeutsche Zeitung, 16. November 1998 NewsBote, Gelsenkirchen, 16. November 1998.

⁶⁶⁷ Bauer Markus: Otto Schily. Roter Sheriff wird 75. FOCUS-Online 20.07.07: Online: http://www.focus.de/politik/deutschland/otto-schily_aid_67221.html, accessed 23.02.08.

practice their culture in the forest where their asylum homes are found. Politicians use this argument to reinforce the creation of camps to satisfy the demands of their people. To maintain a homogenous culture of the Germans. The very discriminative and racist sentiments prevailing in Ukraine and Libya against the asylum seekers and other migrants are as well very strong in Germany.

The camp strategy of the German government and other EU countries has created asylum seekers into a target group where they have to remain at a certain level of the society. It has created a level of people who can do the cheap and dirty jobs that the Germans or other Europeans do not want to do. This strategy is well prepared in advance in a manner that the camp inhabitants are first of all refused all their rights as human beings, destroyed psychologically and later if they find them selves in the society they are obliged to take all these low paid dirty jobs. This logic has created the ideology of the superior Germans or Europeans to the inferior asylum seekers or migrants. While in camps, they are not able to work because they are prohibited. This prohibition makes the asylum seekers to be longing to do whatever sort of jobs they find. Some of them finally make their way out of the camps through marriages to Germans, seen as the only way out. At this stage, it is difficult to find good jobs because they were prohibited from learning the language or to study when they were at a certain age and have the interest to.

The strategy of the German and EU governments to put people in camps in very isolated forest, industrial zones at very small villages that one cannot find a job, receive very insignificant social welfare benefits and restrictive freedom of movement force these people to leave these camps and go to big cities and do what ever types of cheap dirty jobs rejected by Germans or other EU citizens in order to survive. The main objective for such jobs is to generate some cash to provide them selves with basic necessities their insignificant social welfare benefits are unable to buy. These isolated camps usually give much the false impression that they are criminals the government does not want to mix with other normal people. This false impression has generated a general belief that migrants are criminals and other clichés that the society usually carries against migrants. This very structure of leaving the camps does exist in Libya and Ukraine as well. Those detainees that these two countries did not succeed to deport are released after a long while from detention camps. After the release, they usually move to bigger cities like Tripoli in Libya or Kiev in Ukraine to search for cheap dirty jobs not done by citizens of these countries. The camps are used to destroy the migrants and to force them to believe that they are inferior to the citizens in the country they find them selves.

This discriminative attitude of the German authorities is very strong that the privacy of asylum seekers is not more respected like in Ukraine and Libya. In Ukraine and Libya, the authorities pop into the detention cells of the detainees and search them whenever they want without respecting their privacy. This is the very situation here in Germany. In the territorial jurisdiction of Perleberg, the asylum seekers are permanently complaining that when they visit the aliens' office, the officers usually confiscate their handbags and search in an arrogant manner without any permission. Liouse from Cameroon said:

"It has happened to me more than once that when ever I go to the alien office either to collect permission or to renew my stay, one of the workers will grab my bag with force and start searching. What ever they are searching for, I do not know. That does not only happen to me but to other men and women. For the men, they confiscate their purses and search in a brutal manner. The contents of our bags are purses are usually dumped on the table and the search begins. In case they see some money, they confiscate it without a receipt."⁶⁶⁸

This lack of respect of privacy also happened with three asylum seekers from Bukina Faso who was walking on the street and two plain cloth policemen pounced on them. These police officers asked for their identity cards. As they saw that they were not in their jurisdictions in which they were obliged by the authorities to be there, they immediately asked if they took permission to be in Berlin. The three asylum seekers presented their permissions permitting them to be in Berlin. That did not stop them from searching the asylum seekers without any warrant of search. These asylum seekers asked the police officers if they have the right or warrant of search? They answered:

"Things have changed. We have the right to search you whenever we want, where ever. No matter if you carry a permission or not."⁶⁶⁹

The search carry on by the police officers is building up a lot of racist tendency in the minds of people passing. Children grow up with this mentality that "foreigners" are

⁶⁶⁸ Interview with Louise, a Cameroonian asylum seeker based in Perleberg. This interview was conducted on the 11th of July 2007 in Perleberg.

⁶⁶⁹ Interview with Ibrahim Kerry, former asylum seeker in Garzau. This interview was conducted in Berlin on the 10th of July 2007.

always being searched because they are not needed in our society. On the other side of the coin, the police officers and other authorities behind this racist search do not see them selves as part of the racist machinery. They see themselves as part of the executive of a democratic society. But at the same time, they are an important part of the complicated racist construction.

7. Medical Health Care

According to Article 25 of the Universal Declaration of Human Rights:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, widowhood, old age or other lack of livelihood in circumstances beyond his control.”⁶⁷⁰

In addition to the UDHR, Article 12: 1 of the International Convention of Economic Social and Cultural Rights states:

“The state parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁶⁷¹

These above mention these three countries have signed Conventions by consenting. In Ukraine and Libya, the medical treatment of refugees, asylum seekers and other migrant detainees does not correspond with the terms of these above-mentioned Conventions. There is a violation of the rights of these individuals, due to this; it is difficult to obtain good health and well being. Many asylum seekers have different types of illnesses generating from different sources like overcrowding in detention camps, poor nutrition, the general poor living conditions, stressful detention conditions, lack of proper medication and the trauma faced by all because of the conditions that made them to leave their homes, the sufferings they encountered on their way during flight, and the difficulty they are pitted in their flight destinations.

⁶⁷⁰ Article 25 of the Universal Declaration of Human Rights, 1948

⁶⁷¹ Article 12: 1 of the International Convention of Economic Social and Cultural Rights, 1976.

In Ukrainian detention facilities, when somebody is seriously sick, the military officers do not usually take it serious. In these centres, there is no health unit. It is only in cases that the sickness becomes very serious that the sick person could be rushed to the hospital in handcuffs. At times, the military will remove the person and dump else where not to bear the responsibility in case the person dies. The food provided causes most of them to be sick due to the poor state and without balanced nutritive values. There is a wide spread violation of the rights of the detainees. They are seriously beaten, put in hygienic rooms, without ventilation for days. All these show how the Ukrainian government minimises the health conditions of detainees.

As already mentioned in this work, in relation to transmissible diseases, the Ukrainian government has a national treatment programme. If this programme were provided, it would have made it possible for refugees and asylum seekers to have access to free drugs against tuberculosis or to be hospitalised if necessary. In many interviews with different refugees from different countries, I got a different respond. Most of the asylum seekers said:

“That the law is existing but it is not implemented. Many of the refugees suffer without assistance from the state. The issue is not to have a beautiful law but how to implement the laws. This position of asylum seekers and refugees tandem with the declaration of HIAS that said, “The Ukrainian refugee law is considered as one of the best in Europe. But it is not efficiently implemented.”⁶⁷²

As a reaction to the health situation, the UNHCR concluded that the state is unable to take enough care of the asylum seekers and refugees since, “supplementary medication which is often needed to effectively combat the diseases is not free and is too expensive for most asylum seekers and refugees.”⁶⁷³

⁶⁷² Interview with Emmanuel Kanavanga working with HIAS Ukraine on the 24.05.2006 in Kiev

⁶⁷³ Draft from the UNHCR: Strengthening Protection Capacity Project, Analysis of Gaps in Refugee Protection Capacity Ukraine. May 2006, p. 20.

According to the Regional Representative of UNHCR, Simone Wolke: “the UNHCR has signed a contract with a hospital that assist the asylum seekers.”⁶⁷⁴ But this is assisting only asylum seekers who are not in detention camps. The detainees in detention camps do not benefit from such facilities and those living out of Kiev.

To the health situation in Libya, some of the detainees have contracted transmissible diseases in detention facilities like in Ukraine due to overcrowding and constant contacts with other detainees who are sick. There are transmissible diseases like tuberculosis and influenza. It would have been logical for the police officers or soldiers to separate the patients from the healthy detainees. But they do not. When the detainees are apprehended, they do not undergo any medical check-up so nobody is aware of what diseases the other has.

Pregnant women, who were detained, slept on bare floors like in Ukraine and developed pains all over their bodies but the police did not care to take them to a doctor. DD who was locked up in Misrata said:

“ As I was in Misrata detention camp, I was sleeping on the floor with my pregnancy. I developed lots of pains that I complained to the police but nobody took me serious. One police officer to which I complained answered me that that is the price of wanting to go to Europe using a boat. I thanked my boy friend who rescued me by bribing some police officers⁶⁷⁵ .”

As in Ukraine, the Libyan government provides possibilities for free treatment to those who have transmissible diseases. But there is no person to enforce this law. As a detainee or former detainee, it becomes very difficult for somebody to have access to the free treatment. Many of the interviewees declared that they do not benefit from such favour. They have to buy their drugs alone if somebody is ill. In this case, the law exists as in Ukraine but the application is different. For those in detention, the police or border guards do not allow them to receive medical services.

⁶⁷⁴ Interview with Simone Wolke at the head office of the UNHCR Kiev. This interview was conducted on the 23rd of May 2006 in Ukraine.

⁶⁷⁵ Interview with DD who was locked up in Misrata for one month. This interview was conducted in Misrata, Libya, at his home on the 2nd of April 2006.

In Libya, just like in Ukraine, if a migrant or any of the detainees is seriously sick, he or she is abandoned to his or her self. No medical treatment, no social services and no care. There are no organisations that can advocate for the detainees to force the government to meet their obligation to provide health care to the asylum seekers and other migrants. This lack of NGOs and other humanitarian organisations have weakened the promotion of legal and human rights framework to promote health and prevent diseases. This has made the migrant population living in Libya to suffer enormously in case of an illness. They are mostly afraid to go to a doctor or hospital because the doctors and nurses usually treat them in an unfair and brutal manner.

The situation in Libya is worse because if at last the military or police officers decide to bring the patient to the hospital, the medical officials in charge do not receive the case with seriousness. In case where they decide to work on the person, they do not manifest any form of sympathy. That was the case with Kenneth, from Cameroon who described how he was treated when he had a wound on his head. "The nurses were very brutal in a way that the message is transmitted to the patient that he or she is not wanted in the country."⁶⁷⁶ The hatred of sub-Saharan Africans is very strong in a way that the other foreigners from Philippine, and other Eastern European countries working in the hospital in Libya have become part of the racists not wanting to receive African migrants.

Germany with all the technology and long time experience is a country with no much difference. Though Article 34 of the General Comment on International Covenant on Economic Social and Cultural Rights (ICESCR) (2000), defends the human rights of certain groups like refugees and asylum seekers which are constantly abused, the German authorities still do not live up to the standards of this Comment. The Comment states that:

In particular, States are under the obligation to respect the right of health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy..."

⁶⁷⁶ Interview with Kenneth in Tripoli, Libya. This interview was conducted on the 20th of November 2006.

As already mentioned above, if an asylum seeker is sick, he or she does not receive any treatment. Treatment is usually given when the person is suffering from acute pains or in cases of emergency. This discrimination of treatment because a person belongs to a minority group known as asylum seeker is the very behaviour in countries like Libya and Ukraine. In Germany, the asylum seekers are dealing with trained social workers and not with military officers like in Ukraine and Libya. That notwithstanding, if an asylum seeker is ill, the social welfare officers either refuse to give a sick voucher to the asylum seeker to go to the hospital or the voucher is given but the social welfare officer will telephone with the doctor to give instructions on how the asylum seeker should be treated. Social welfare workers usually refuse the fact that asylum seekers are ill. A thing that is done in Ukraine and Libya by military officials.

Discrimination against asylum seekers by medical doctors is very common in Germany as in Libya. In the different cities like in NeuStadt Dosse and Forst in the state of Brandenburg, the asylum seekers often complain that the doctors give them expired drugs. As the asylum seeker reacted, the medical doctor still told him that it is an anal drug so it is not dangerous. An issue a doctor cannot do to a German. Another very discriminative behaviour is the act where doctors keep on asking patients what they are doing in Germany. They tell their patients to either go to Britain or to France. And that if they do, they will receive better medical treatment. According to Kamga, an asylum seeker in Forst, these questions have been posed several times to him and other colleagues in Forst. Doctors usually develop discriminative attitude to asylum seekers and usually receive them as last patients. Priorities are usually given to Germans and other members of the EU.

The simple reason is that the state exerts excessive powers on those in the camps. This method of functioning is found in other offices covering asylum seekers. In offices where asylum seekers need social services like health, they are refused. A medical doctor will ask an asylum seeker to either go to France or to Great Britain or provide the patient with expired drugs. Such racist attitude of functioning is an issue of lack of will and not that the needs are not available. Kamga, a Cameroonian based in Forst narrated their sufferings with some medical doctors and social welfare offices in Guben and Forst. In Guben and Forst, there are medical doctors who always refuse to treat asylum seekers with the excuse that they are not sick. These doctors will prefer to say, asylum seekers are suffering from nostalgia and usually propose to them that they can organise their return journey to their countries of origin. Kamga once confronted one of such doctors, a

lady as she made this statement and proposal to a patient he accompanied to the medical doctor. Kamga said;

““Madam as a medical doctor, your function is to treat patients that come up to you. I do not see what a medical doctor has got to do with migration issues. This patient is not here because she wants to be here but because she is forced to be here so your proposal to organise a return journey is not important. Please pay attention to the sickness and let us go.”⁶⁷⁷

The diseases that are usually treated in Germany, Ukraine and Libya without hesitation are transmissible diseases. The question is, why is it so? Is it that these governments are afraid that their citizens could be contaminated or because it is a human right of everybody to be treated in case of any illness. This provision to treat transmissible diseases is found in these three countries. The logic behind is, the different governments are paying more concern on their citizens and not because detainees, asylum seekers or other migrants are sick. This racist way of thinking could be traced back in the colonial era in Namibia in 1904 during the colonial war when General Luther von Throta said the Namibian war victims should be put in camps or pushed back into the sandfield in order not to contaminate the German soldiers. A camp is used as an instrument to detain people who are sick and can contaminate others. This belief until today is found in the minds of different people that those in camps are having diseases that can contaminate others and because of that should be excluded from the society. It is unfortunate that billboards of Humana are placed all over Germany with the map of Africa on it and the symbol of AIDS. This act of HUMANA⁶⁷⁸ helps in spreading the racist ideology that Africans are the bearers of AIDS. This process assist in institutionalising racism since:

⁶⁷⁷ Interview with Kamga, an asylum seeker found in the asylum camp in Forst, in the state of Brandenburg. This interview is conducted on the 10th of November 2007 in Forst.

⁶⁷⁸ HUMANA is a German registered organisation which is using clothes for development (HUMANA, Kleidung für Entwicklung). It can be accessed at www.humanapeopletopeople.de or at the home page, www.humana-kleidersammlung.de. This information was got on the 9th of November 2007.

“Racism stems from the belief that people should be treated differently because of a few phenotypic features. Racism can manifest as individual or group acts and attitude or institutionalised processes that lead to disparities.”⁶⁷⁹

8. Human Rights

Although the Ukrainian constitution stipulates the right of freedom of movement for everyone legally living in Ukraine, the freedom to choose a residence and the freedom to leave the country except of the restriction imposed by the law, the asylum seekers and detainees in Ukraine do not benefit from these advantages because the law restricts that. It is said that:

“The law on Freedom of Movement and free choice of places of Residence in Ukraine specifically notes that freedom of movement can be limited to asylum seekers pending a final decision on their claim.”⁶⁸⁰

Since asylum seekers are detained or given a temporary document, it makes it impossible for them to move freely because of police harassment that they usually encounter when they move out of Kiev. With the insecurity due to the worthless documents they do carry, some said brandishing different types of documents:

“With these we do not have the right to leave Kiev because we are going to be either detained along the line or brutally treated by the police.” I experienced what the asylum seekers and other migrants told me immediately I arrived Chop train station and in Mokachevo. The police controlled and detained me at the border, though I had my visa to enter the country. The restriction of freedom of movement that detainees and asylum seekers in Ukraine suffer is not in conformity with the provision of the Geneva Convention of 1951. The Geneva Convention obliges to give the right of movement to “refugees lawfully in its territory” who include asylum seekers living in the territory or admitted in the Refugee Status Determination. It is the right for aliens to move freely like citizens of the country.

⁶⁷⁹ McKenzie Kwame: Racism and Health. In: student BMJ 2003, 11:1-42 February. Online: <http://studentbmj.com/issues/03/02/editorials/2.php>, accessed on the 14th of July 2007.

⁶⁸⁰ Draft from the UNHCR: Strengthening Protection Capacity Project, Analysis of Gaps in Refugee Protection Capacity Ukraine, May 2006, p.15 and 20.

The freedom of movement is also very strongly restricted in Libya. To begin with, in detention facilities, it is impossible for a person to speak of freedom of movement since there are closed detention facilities. The detainees like in Ukraine cannot go out of the camps. Those who can move are those out of the camps. But like the situation in Ukraine, it is almost impossible for those who do not have regular document to move in the country. It is difficult to see a sub-Saharan African without regular documents in the city centre of Tripoli. Not to mention the fact of travelling freely from one city to the next. Some of them usually travel from one city to the next but it is usually arranged. If caught by the police or border guards, they are immediately brought to a detention facility. In a case like that they usually pay the drivers an extra sum of money to guarantee their security or they bribe the police officers if caught.

In Germany, asylum seekers living in camps are dispersed in particular obligatory jurisdiction by the German authorities and do not have the constitutional right or freedom to move out of these jurisdictions as they want without a permission. This permission is supposed to be collected from the aliens' offices. In most of the cases, the aliens' offices refuse to give permission to asylum seekers. In case these aliens' offices want to issue such permission, they usually do so for a much shorter time than what the asylum applicant demanded. If the police out of the applicant's jurisdiction catch an asylum seeker, the person faces different types of punishment from paying a financial fine to a prison sentence. This has made the asylum seeker to permanently experience latent fear. Though it is stated that after asylum seekers have come out of the Reception Centre, the authorities may grant permission of public interest or to eliminate "unintended hardship."⁶⁸¹

Actually this section of the law would have limited the too much discretion of the authorities of the alien's offices but the officials who still use their discretion to refuse this permission constantly abuse this request. In the three countries, people who fled from their countries in search for security, peace and stability lose their basic rights and freedom even if found in democratic countries. Another case in Germany that can be compared to that of Ukraine and Germany is the situation of deportation prison. In this case, the prisons are closed like the camps in Ukraine and Libya; visits are usually restricted to particular hours and number of visits. The deportation prison confiscates all

⁶⁸¹ Article 58 of the law governing the asylum procedure (§ 58 AsylVfG), 1993, revised in 2007.

the necessary rights of the detainees like in Libya and in Ukraine for quite a long period of time.

This abuse of human rights continuously fan racism in these countries when the police are constantly controlling asylum seekers or migrants in public places. It has become a duty that the police officers use it as a strategy to show their citizens they are instituting security in their countries by controlling “foreign looking people”. Little do they understand that they are portraying how racist they are.

9. Principle of Subsidiary or Complementary Protection

The principle of Subsidiary states that the courts should have a supplementary nature to protect the rights of asylum seekers who do not satisfy the nexus of 1951 Convention definition of who is a refugee but are in need of international protection. In reference to this principle, “human rights should be primarily guaranteed in their natural environment, i.e. domestic law.”⁶⁸² The court usually makes a shift from the political position taken by authorities of the state.

In Ukraine, there are no legal provisions to grant subsidiary protection to asylum seekers since the court is strongly under the influence of the executive. The European Convention of Human Rights embodies what can be termed the principle of subsidiarity as can be seen in the case of *Jabari v. Turkey*, in which the court gave “due weight to the UNHCR’s conclusion about the applicant’ refugee status when coming itself to the conclusion that her deportation to Iran, if carried out, would constitute a violation of Article 3 of the European Convention.”⁶⁸³ In this case, the court could stop the deportation to Iran since Iran is considered a country, which permanently abuses human rights and torture of its citizens, and others living in its territory.

In the above-mentioned case, the court concurred with the decision of the UNHCR and not the authorities of the state. In Ukraine, this is not the case. Since the court has not

⁶⁸² Pellonpää Matti: ECHR Case-Law on Refugees and Asylum Seekers and Protection under the 1951 Refugee Convention: Similarities and Differences. In: International Association of Refugee Law Judges (eds): *The Changing Nature of persecution*. Bern 2001, pp. 139-150, p.140

⁶⁸³ Pellonpää Matti: ECHR Case-Law on Refugees and Asylum Seekers and Protection under the 1951 Refugee Convention: Similarities and Differences. In: International Association of Refugee Law Judges (eds): *The Changing Nature of persecution*. Bern 2001, pp. 139-150, 140

yet got complementary protection power, refugees recognised by the UNHCR in their refugee determination status, are rejected by the Ukrainian migration service. This was the case with “a Chechen woman recognised by UNHCR Kiev as deserving international protection, applied twice to the Ukrainian authorities for status, but her application was rejected without explanation.”⁶⁸⁴ The authorities are ignorant of the fact that a detainee or asylum seeker is supposed to be taken to the court before deportation or to the fact that the UNHCR could measure a certain degree of danger and inform the state to stop the deportation of a person.

In Libya, one cannot speak of subsidiarity or complementary protection because asylum does not exist in the country. Decisions are usually taken by government officials and not by the court. Political decisions are more respected by judicial decisions. In Ukraine, the government allows the UNHCR office to function even if they do not accept documents from the office, at a certain level the authorities try to cooperate with the UNHCR. That is not the case with Libya. Libya does not respect the existence of the UNHCR in its country.

In Germany, the courts can as well make a reference to Article 3 of the ECHR. There are so many cases that have been stopped by the courts. This is a total different situation from Ukraine and Libya.

Other Functions of Camps

As already seen, there are so many functions that are identical and some not nevertheless, there are some functions that I will still like to emphasise as similarities and differences of these different types of camps. Originally, the external camps came in the minds of the EU governments as an instrument to exclude but as well to be used to file in asylum claims and if the claims are recognised, the asylum seekers will be accepted into the EU state of the choices of the asylum seekers. As I was on the field, I realised that the structures set up in these different countries are not what was said from the beginning.

⁶⁸⁴ Human Rights Watch: Ukraine: On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union, Human Rights Watch Vol. 17 No 8 (D), November 2005, p. 5.,

In Ukraine, for instance, the Ukrainian government is using the camps as an instrument to detain prospective asylum seekers, refugees and other migrants. Those who want to file in asylum claims are allowed at times to do and if accepted, the applicants are not brought to any of the EU country of the applicant's choice but obliged to live in Ukraine since Ukraine is now considered as a safe country. This strategy of the EU states to prohibit asylum seekers from coming into EU states is what was originally in the minds of EU government officials. In this regard, the Ukrainian camps are used as instrument to exclude and externalise asylum seekers and other migrants from coming into EU states. The camps do function as buffer zones between the EU states and other countries that are not part of the EU to detain anybody who wants to transit through the country into any of the EU territory or any body entering Ukraine in an irregular manner.

Another function of the camps of Ukraine is to receive deportees from EU state. This was the case with Mams, Papie who were caught in Poland as they tried to make their way into one of the EU states. They were immediately taken to Lutsk at the military camps hosting other detainees. The Polish government has signed readmission treaties with many of the East European states, Ukraine inclusive:

. "These treaties facilitate the task that not only citizens from particular countries living in Poland without a residence permit will be taken back but also "third state citizens". Those coming from other countries and used Poland as a transit country."

In the case of Libya, it is clear that the camps as in Ukraine are used to deter asylum seekers from coming into the EU states. There is no asylum procedure in this country but there are camps everywhere to detain prospective asylum seekers and other migrants. Since there is no asylum procedure in the country, it is clear to say that the EU states do support the camps as instrument to stop the journey of asylum seekers from arriving in EU states to seek effective protection and security in the EU territories. The detainees are caught, detained and either deported back to their countries of origin or later released because the Libyan government does not find the possibility to deport them. Still like in Ukraine, the camps in Libya are functioning as an instrument to receive asylum seekers, refugees and migrants rejected from EU states. In 2004, a group of individuals who landed at Lampedusa in Italy were deported to Libya and the Libyan government put them in these camps. This confirms the readmission treaty signed between Libya and Italy, however, until today, nobody knows the clauses of the treaty.

In Germany as in other EU countries, the camps are used to prohibit people from getting real access into the country. At the airports, the camps are used as instrument of retention. This means that: "...the situation where a person is not let into a country and is therefore "retained" at border control premises. At the same time the person is free to return to the country he came from or anywhere else."⁶⁸⁵

Roland Bank continues:

"For instance, an Algerian asylum seeker who has not been admitted to the territory but who also was refused return by the Algerian authorities (claiming he was not Algerian but Moroccan) spent about eight months in the transit area of Frankfurt airport."⁶⁸⁶

This practise at the airport is exactly what is happening when an asylum applicant is already in the country. If the person files in an asylum claim and it is not accepted, the failed applicant is kept in the camp until the person decides to leave the country. In Perleberg, in the asylum camp in the state of Brandenburg, one family from Kosovo said; " I have been here for seventeen years. Everyday people come and look at us like animals in the zoos. My children grew up here. They all grew up in this camp."⁶⁸⁷

The camps are used as instruments for deportation. As asylum seekers and refugees are not recognised. The authorities always deport them with the use of different strategies. These camp inhabitants are not allowed access into the society. The camp in this case is used as an instrument for exclusion from the main society and for deportation.

⁶⁸⁵ Bank, Roland: Reception Conditions for asylum Seekers in Europe: An Analysis of Provisions in Austria, Belgium, France, Germany and the United Kingdom. In: Nordic Journal of International Law Vol. 69, No. 3, 257-288, 2000, p.260.

⁶⁸⁶ Bank, Roland: Reception Conditions for asylum Seekers in Europe: An Analysis of Provisions in Austria, Belgium, France, Germany and the United Kingdom. In: Nordic Journal of International Law Vol. 69, No. 3, 257-288, 2000, p.262.

⁶⁸⁷ Interview with an old man from Kosovo. This interview was conducted on the 5th of June 2007 in Perleberg.

10. Deportation

Deportation is a common phenomenon in these three countries-Ukraine, Libya and Germany. One main practice before deportation is the use of detention. In Ukraine, as already mentioned above, most of the migrants are not given the chance in detention camps to seek for asylum. They are deprived of their liberty meanwhile the authorities organise their deportation documents from the different embassies of the detainees found in this country. Though not all those who are deported are refused the right to file in their asylum claims. There are some that receive negative answers during the asylum procedure. These are as well detained in these detention camps as the authorities seek their deportation documents.

In Libya, the situation is different though detention does exist. The authorities that have never accepted that there is an asylum problem considered the immigrants to be "Economic Immigrants". With this belief, the government has always detained them at the borders of entry in camps, those already in the country or attempting to cross over in to the EU territory. When somebody is caught, like in Ukraine, the person is detained while the Libyan authorities organise the deportation documents from the embassies of the person found in Libya.

In Germany, the situation is some how the same like in Ukraine but different from Libya because there is an asylum procedure. The asylum seeker is deported if the asylum claim is rejected. In this case, there are deportation camps where the failed asylum seekers and refugees are usually arrested and detained before deportation. As has been mentioned, detention takes place in the airports as well as in the main territory. Detention can go up to eighteen months according to the German law.

Though there is an official prohibition of torture in Germany, the brutal acts of the police officers and border guards minimise torture. Therefore there is the abuse of human rights in these three countries in the course of deportation. The prohibition of torture is confirmed as important human rights in almost all international and regional treaties in relation to fundamental treaties and human rights. That notwithstanding, the abuse of human rights is done in different ways. First of all these countries disregard the danger faced by deportees if deported to their countries of origin where their lives are at stake. In this case the state has surrendered an alien to the pursuers and secondly, the method used to deport the deportees. In all, deportation is an abuse of human rights. The right to move and settle where a person wishes is a fundamental right.

In Ukraine, asylum seekers and other detainees are being beaten and forced to leave the country. Worse of all the Chechen asylum seekers who have almost no possibility to resist since the Ukrainian government can easily obtain a travel document. The Ukrainian government usually minimises the danger faced by Chechens in their country when deported. The departments responsible for deportation are the ministries of armed forces where the military officers usually carry on the deportation, ministry of the interior or the migration service.

In the case of Libya, there is a wanton abuse of human rights that almost no body is able to report since there are hardly human right organisations in the country. Beatings are part of the deportation procedure. Like in Ukraine, the Libyan government deports individuals to countries where their lives are threatened. This is the case with Eritreans, it was reported by Human Rights Watch that a number of deportees from Libya disappeared in Eritrea as they reached their country of origin. Even with such a negative experience, Libya has not stopped to deport Eritrean refugees. Another abuse of human rights is the method in which deportation is carried on. Usually, deportees are carried in closed vans, without windows or any possibility for ventilation, no water or food and dumped in the desert for the deportees to continue the rest of the journey on foot. At times these deportees are minors or children with their parents. The border guards or police does the deportation.

In Germany, the abuse of human rights has been registered in many circumstances. The German police usually tape the mouths of deportees, put handcuffs on their hands and stuff their mouths with materials. This has led to the death of so many as already seen above. As in Ukraine and Libya, very seriously sick patient who cannot have treatments in their homes of origin are as well deported. This is a serious abuse of the right of such persons. According to Article 3 of European Convention of Human Rights, to send a person back to a country where medical resources are limited, amounts to real risk of dying under most distressful circumstances and would does tantamount to inhuman treatment. Article 3 of ECHR further prohibits the deportation or expulsion of a person to a third state, which is unable to provide guarantee that the person could survive with the illness. The person is surely waiting for death as the last solution.

The EU states, Germany inclusive, have signed so many readmission treaties with different countries to receive persons deported at the EU borders or territories or for

those who will give their consent to return. If not forced deportation will be exercised as it is done today in Germany. The EU Commission in its deportation policy like any other EU state The EU Commission states supports the German government:

“The credibility and integrity of legal immigration and asylum policies are at stake unless there is a community return policy on illegal residents. Moreover, all efforts to fight illegal immigration are questionable, if those who manage to overcome these measures succeed finally to maintain their illegal residence. The signal effect of a failed return policy on illegal residents cannot be underestimated.”⁶⁸⁸

This special emphasis on deportation to fight irregular migrants through a coherent and precise manner is as well related to preventive measures. This has increased the practical cooperation between the EU member states in information exchange, collective training of their border police, collective support from the border police and collective return operation. They also intensify cooperation with third states and develop specific deportation program in relation to specific countries concern.

Despite all these measures, as in Libya and Ukraine, the German government usually uses illegal methods to deport asylum seekers and failed asylum seekers. In Ukraine and Libya deportation is carried on without the individuals taken to courts. The deportees are not given the right to defend them selves. This is an abuse of their judicial rights. In Germany, it is almost the same. Illegal delegations are brought from countries of origin of asylum seekers and failed asylum seekers to identify individuals either through their voices, physical appearances or by convincing them to describe a particular part of their country from which they are coming. All these acts have led to deportation or forced many to disappear underground into different EU countries. This is the case of a Cameroonian who filed in his case as a homosexual and was rejected. He was taken to this interview by the alien’s office in Nöldnerplatz Berlin as his case was rejected. The interviewers based their argument on the fact that as he spoke, they were able to identify him from his accent. And now he is under deportation threat. Another case is found in the state of Brandenburg where the rejected asylum seeker refused to speak to the

⁶⁸⁸ European Commission: Communication from the Commission to the European Parliament and the Council, in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents. COM (2003) 323 final. Brussels 03.06.2003.

delegation brought by the German government because he considered the delegation to be illegitimate. As he returned from the interview, the alien's office in his jurisdiction realised that he refused to cooperate with the illegal delegation, they asked the social welfare office to reduce his social benefit. He is told that the benefit will be reinstated on certain conditions. Either he goes to his embassy of origin and brings a document to certify the fact that he is a citizen of a particular country or to cooperate with the delegation in a future date when he is taken there again. The asylum seeker holds that cooperating with the delegation means deportation so he is not at any moment ready to cooperate with the delegation. As the asylum seekers of Brandenburg said:

Representatives make the members of the delegations from the embassies of the country of origin of asylum seekers. They try to persuade one to accept that he or she is coming from a particular country. But since as those of them in the state of Brandenburg did not make a statement, the members of the delegation were forced to say: "it is your right to talk or not to talk. We cannot make any declaration if you do not speak."⁶⁸⁹

After observing this section of comparative analyses, I will bring out what could be deduced in the EU migration system. This will justify the fact that the EU is more concerned with the exclusion of migrants from Europe and to portray its power in this world of globalisation.

The Origin of Frontex and EU Asylum and Migration Politics

The camp regime has created a threat to the use of force by the EU government in which different intervention units have been created to either return asylum seekers wanting to enter the EU states or to arrest them and send back to countries where these camps are found so that they can be detained. There is now the confusion of law and violence. Things are not clear if the intervention units are operating legally or by the use of extra-judicial means. This is what Agamben describes as "the sovereign nomos is the principle that, joining law and violence, threaten them with indistinction" This has led to the creation of the new RABITs (Rapid Border Intervention Team) European force known as FRONTEX by the EU states to use military intervention and push back asylum seekers.

⁶⁸⁹ Interview with „AIR Force“ after the interview for deportation in Cologne. This interview was conducted on the 23rd of September 2007 in Eisenhüttenstadt.

Refugees and migrants wanting to make their way into the EU territory in search of security. FRONTEX:

“First phase of the Operation Nautilus took place in June and July 2007. The objective of it was to strengthen the control of the Central Mediterranean maritime border using technical means of several Member States and also to support Maltese authorities in interviews with the immigrants. Assets from five Member States were deployed to this operation, air means from Germany and France and vessels from Greece, Spain and Malta. Maltese interviewing teams were supported by experts from Italy and France.”⁶⁹⁰

The FRONTEX is a liaison partner promoting the camp regime because at the maritime, terrestrial and air borders of the EU states, different teams are found to deter the entrance of asylum seekers, refugees and other migrants. The creation of FRONTEX has made it clear that there is a specific form of racism directed against people from sub-Saharan Africa:

“At the same time one can hear voices from Member States inviting Frontex to use Rabits (Rapid Border Intervention Team) immediately for stopping the flow of illegal migrants from Africa. These voices would also like Frontex to deploy as much equipment as possible to the region. Why? Because Frontex has 21 airplanes, 27 helicopters and 116 boats. That’s the fact I cannot deny, we have them... on paper.”⁶⁹¹

A general war against asylum seekers, refugees and other migrants and especially those from sub-Saharan Africa has been declared. All types of military weapons are used to prohibit asylum seekers and refugees from coming into the EU states. Weapons that were supposed to be used on war fronts have now become weapons to trace people fleeing away from persecution. This threat of the use of force is clearly seen in the UK paper of Tony Blair against persons and states claimed to be producing refugees. It is clear that refugees will be deprived of their freedom and liberty and will be deported in

⁶⁹⁰ Frontex: Joint Operation Nautilus 2007 – the end of the first phase. 06-08-2007. Online: http://www.frontex.eu.int/newsroom/news_releases/art28.html accessed on the 31 August 2007.

⁶⁹¹ Frontex: Joint Operation Nautilus 2007 – the end of the first phase. 06-08-2007. Online: http://www.frontex.eu.int/newsroom/news_releases/art28.html accessed on the 31 August 2007.

these camps out of the EU states. Tony Blair talked of "...The need to intervene so as to reduce flow...Military action as a last resort."⁶⁹²

Meanwhile the German minister of the interior Wolfgang Schäuble said; "We have managed to strengthen the European border management agency Frontex noticeably, which will translate into improved protection for the external borders. The amending regulation enables the agency to provide rapid border intervention teams to assist Member States particularly affected by illegal migration. Furthermore, guest officers may be given executive powers during Frontex-led missions. This will make joint measures much more effective. At the same time we managed to launch a coastal patrol network in the Mediterranean Sea and around the Canary Islands, and to set up a centralized record of surveillance planes, helicopters, ships, and technical equipment provided to Frontex by Member States."⁶⁹³

⁶⁹² UK New Vision paper, 2003, p.10

⁶⁹³ EU 2007.de. Press Releases: Home affairs ministers of Germany, Portugal and Slovenia: First leg of the trio presidency a great success. 26.06.2007. Online: http://www.eu2007.de/en/News/Press_Releases/June/0626BMIBilanzTrio.html accessed on the 8th of April 2008.

Chapter VIII. Conclusion

The search of the camp system both within and without the EU states to prohibit asylum seekers from coming into the EU territories or to exclude those already found in EU territory is part of the injustice of the global refugee regime. This is what Giorgio Agamben describes in his book *Homo Sacer* as the state of exception “exception, excapere, taken outside”⁶⁹⁴. The existence of these camps has created a permanent state of exception to manage the asylum regime as a whole.

Agamben’s use of “Exception” in the camp system is not an error. Exception comes from the Latin word “ex capere” which means to “take outside”. In this work, take outside is analysed from three different perspectives. The first perspective refers to the camps within the EU states. Though the camps are in the different EU states, the inhabitants of these camps are on the different national territories of the EU states, they are still excluded from the very societies in which they find themselves. That means they have been taken outside from the society in which they intended to seek for security since they cannot share the basic rights and other advantages found in here. Those in these camps have been rendered bare life-nuda vita without rights.

The second perspective is the case of the extra-territorial camps - Transit Processing Centres and Regional Protection Areas found outside of the EU states. They indicate that the prospective asylum seekers, refugees, and other migrants have been prohibited from arriving at their final destination states to search for effective protection. This means these individuals have been taken completely outside of the EU states. This also applies to those who were already inside the EU territory but were deported into any of these camps found outside of the EU states, either directly beyond the EU borders or in different regions of the world. It also reflects to those who were formerly living freely in the EU territory in the different states and were later arrested and put in these camps for deportation. The detention of these people in deportation camps has taken them out side of the society.

⁶⁹⁴ Agamben, Giorgio: *Homo Sacer, Sovereign Power and Bare Life*. Stanford, California, USA, 1998, p.170.

The third approach refers to asylum seekers; refugees and migrants concentrated in these extra-territorial camps found in the “new” societies and are prohibited from having access to these “new” societies because they are found in different forms of camps like the closed camps in Ukraine and Libya which prohibit them access into the cities. They are kept outside from the EU territory and at the same time from the new society where these camps are found.

Working within these three parameters, the camp system is clearly seen as an instrument playing an important role to exclude, externalise and isolate the “Unwanted Migrants” from the “Third World” out of the EU territory. To reinforce this system, there is the use of a “distance control system”⁶⁹⁵ in the case of extra-territorial camps. There is an inter play of the power of the European Union states in minimising the sovereignty of other states and strengthen theirs.

The EU states have preferred to fund the hosting countries with more money than to allow asylum seekers into their territory for protection. This is a deterrence strategy to protect EU territories from migrants and asylum seekers. Though the scheme from its original form furthers the discriminative initiative where special criteria will be used to select those who will be allowed to enter the EU territories, criteria to be defined only by the EU states to regulate an international migratory system. It is of recent days worsen because one part of the original idea developed by the different EU states to process asylum claims in extra-territorial camps have died down. The EU states are turning some of these countries into host countries. That is turning them to safe and democratic countries capable of hosting asylum seekers and refugees and providing the necessary rights needed. A strategy to control and manage asylum seekers and refugees at the external borders or in other regions of the world. In this example, one sees camps as a prototype space of migration management and the degradation of the social status of those found in them. Agamben describes it as “bare life”.⁶⁹⁶ Or *nuda vita*, life that has no meaning and no future perspectives. The people found in these camps have been reduced to a level of no rights.

⁶⁹⁵ Distance control system is a system carried on from a far distance. In the case of migration and the Extra-territorial camps, the camps found beyond the EU states borders do function as instrument of distance control to prohibit the migrants from a very far distance. This system is applied because the EU states claim the find it difficult to control and deport migrants already found in the EU territory.

⁶⁹⁶ Agamben 1998, p. 10.

At the same time, with a close look to these camp projects, the EU states are acting and manifesting a lot of dominance in the world which is contrary to the provision of Articles 26 and 31 of the Vienna Convention on the Law of Treaties which states that,

“The Provisions of⁶⁹⁷ a treaty to which a state is party are binding on it, and must be performed in good faith.” More to that the Geneva Convention of Refugees of 1951 states “that human beings shall enjoy fundamental rights and freedoms without discrimination.”⁶⁹⁸

The EU states are imposing the processing of asylum in countries, which do not yet have basic democratic principles. And in some, the governments are very repressive. Mr. Abdulati Al-Obaidi from Libya:

“The Secretary of European affairs at the General People Congress (GPC) for Foreign Liaison and International Cooperation, told two Italian newspapers that Europe should stop criticizing Libya for being a jump-off point for illegal immigrants and help it patrol its land borders to stem the traffic... Europe put too much emphasis on trying to stop immigrants as they cross the Mediterranean Sea and should instead provide helicopters and off-road vehicles to stop the traffic from sub-Saharan Africa.”⁶⁹⁹

Camps are used to reduce the rights and freedoms of those living inside; the individuals have lost their rights not to be arbitrary arrested and detained without fair trial, the right to enjoy human and dignified treatment, the right of not being tortured, they should not be subjected to long period of detention or lack of information of when the detention will be over. Through the psychological and physical separation from the citizens of a state and the detainees in camps, the state unilaterally decides when and how the detainees will be released from the camps to either form part of the society or be deported. Normally, if people are deprived of their human and civil rights, they can go to court to seek for justice if treated in an unlawful manner but with a camp system, the state of exception is

⁶⁹⁸ Preamble of the Convention relating to the Status of Refugees, done at Geneva on the 28 of July 1951.

⁶⁹⁹ Al-Obaidi, Abdulati : EU Need to Consult with Libya on Illegal Immigration. In: The Tripoli Post, 11/09/2006. Online: www.tripolipost.com , accessed 20.11.2007.

overriding and has confiscated the rights of those in these camps from seeking a judicial action against the state. And more to that the camp situation is no longer an exception but has become part of the constitution. Due to this, Agamben writes:

“It would be more honest and, above all, more useful to investigate carefully the judicial procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime.”⁷⁰⁰

The right to good health treatment, housing, education, movement and other freedoms of those in the camps are seriously violated and the people have no possibility to engage in a legal procedure. This is the situation in the three case studies. This unequal treatment when compared with the citizens of each of the EU states is what Agamben is strongly criticizing as discriminative.

The camp regime has prohibited the asylum seekers, refugees and other migrants from having an equal space in the EU states and other countries in which these camps are found like the citizens of these countries. Without the camp system, it would have been possible for asylum seekers, refugees and other migrants with the government, the civil society and the media to work together to further a perfect method of creating an equal space to asylum seekers, refugees and other migrants in the society in which they find them selves at a very early stage from the beginning of their arrival into these countries. This would have made a larger public to understand why the asylum seekers and refugees are in their countries and would have facilitated the task of asylum seekers and refugees to easily develop in the new society in the field of politics, economics, and cultural, civic and social aspects. In the camp system, many of the detainees are excluded from the first day to a very long time, either in closed camps, detention camps, deportation camps or in open camps located far away from the society for years with very restrictive measures. Before these people are released from these camps, most of them are already destroyed in a manner that they cannot concentrate to do anything constructive. This helps to create the second-class citizens found in the western society that can only do jobs and other services already rejected by Europeans. Logically

⁷⁰⁰ Agamben 1998, p.171.

imposed to form the poor class in the society that will lead to the creation of poor neighbourhoods or suburbs.

Agamben writes: "The camp is the space that is opened when the state of exception begins to become the rule"⁷⁰¹. The pursue of the extra-territorial camps that are found in the Northern part of Africa and Eastern part of Europe to stop asylum seekers, refugees and other migrants from coming into the EU territory and to be excluded from the society of the country in which these camps are instituted is the most effective description of the exceptional space. In these closed camps, the inhabitants are processed, deported and excluded from the society. They are strictly controlled by military officers, surrounded by thick long walls with barbed wires and either mostly located either in the forests or deep in the desert to effect exclusion and isolation.

The political leaders are using the asylum seekers, refugees and the camp system to misinform and create fears in the society when they make the people to believe that this group of people are dangerous. Political leaders are instigating fears in the general public (the scaring mongering philosophy) and at the same time separating the people from the asylum seekers, refugees and other migrants. When words like "African Drum Beaters...into camps", top politicians use „Bogus Asylum Seekers and Swamp Europe“, they turn to create fears in the public and immediately generate racist and xenophobic sentiments among members of the host societies. Words like these do not create any public understanding why the asylum seekers and refugees fled from their countries of origin. That is why Agamben writes: of it would have been more empowering if citizens of the host countries are able to understand why asylum seekers and refugees are fleeing away from their home countries.

The use of misplaced language is as well very strong in the media. The media either use very hard language that creates clichés and stereotypes in the public, which assist to scare a large number of the already frightened public from the asylum seekers and refugees thereby legitimating the politicians to further the creation of the different types of camps. These media reports have as well contributed to further the strong spirit of intolerance and racism to the extent that a large part of the civil society accepts the fact that this group of people should either be put in closed detention centres or any other

⁷⁰¹ Agamben 1998, p. 168-169.

form of asylum camps that can function to isolate them. Most media do not give accurate and balanced information on issues that concern the refugees. Television coverage and tabloid press have become very hostile towards asylum seekers, refugees, migrants and camps. The repetitive use of images of group of people at the fence at Ceuta and Melilla, Lampedusa, or drowning sub-Saharan Africans on the Mediterranean Sea support the theory of “swamping Europe” and this immediately escalates the already existing fears in the minds of the people who immediately support the construction of camps to prohibit them from coming into the EU states.

Agamben challenges human rights organisations, which instead of challenging the nation state of the idea to exclude and isolate individuals in a manner that their lives will become processed, excluded from any future perspectives, they turn to support the state. Agamben writes:

“In the final analysis, however, humanitarian organisations- which today are more and more supported by international commissions- can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight.”⁷⁰²

This is the position of the former United Nations Higher Commissioner for Refugees when Ruud Lubber during the discussions of the institution of the extra-territorial camp system, came up with the “Three Prongs” or three hard solutions. In its three hard solutions, the UNHCR supported the creation of detention camps within and out of EU territory. At that moment, the UNHCR failed to see the shortcomings of detention camps in relation to human rights. Today, the camps have been instituted and the people put in them have turn to lose all their rights and are detained for an unnecessary long period of time. The same with CARITAS Austria that is today in Ukraine, managing the camps and the lives of those found in the camps and tolerating the EU governments to institute the camps to exclude and isolate the inhabitants. In Rathenow, in Germany, the AWO is one of the organisations that assist the government to promote the camp system. The workers of these organisations are secretly searching the rooms of the inhabitants, opening their letters to pass on private information to the government. There is a court judgement that condemned this act but Mrs. Pagel the agent of AWO is still in this camp

⁷⁰² Agamben 1998, p. 133 .

to support the secret spying system of the AWO and German system. For the fact that the UNHCR did not condemn this camp system means the asylum seekers and refugees have been abandoned to themselves. The camp regime is not only an issue of the EU states. One begins to wonder how serious the UNHCR defends the interests of asylum seekers. Is the UNHCR for the governments or the asylum seekers and refugees? Has the UNHCR got its own independent editorial line or follows that drawn by the EU states government in order not to lose finances and influence? All in all, the camps as have been portrayed in this work are a necessary evil that dominate, discriminate, detain and abuse the rights of those living in them. There is no method to humanise the camps, a reason put forward by some of these organisations like UNHCR, AWO and CARITAS Austria. The double standards of the UNHCR is portrayed as an organisation that is more focused to have power and money from the western governments in order to promote policies needed by these governments. A “paper tiger” organisation that is portraying itself as a humanitarian organisation but satisfying the wishes of western governments to prohibit asylum seekers from coming into the West. Tony Blair wish was to give \$50 to asylum seekers out of the EU territory and that is exactly what the UNHCR is doing in Ukraine. The organisation gives \$45 payment per month that is unable to serve the asylum seekers in any means. The asylum seekers are unable to pay their rents, transportation, health bills, and foodstuffs.

The camp regime has impacted negatively on asylum seekers, refugees and other migrants that have made them a target group. The strong negative public and private discussions from politicians and a greater part of the civil society have a direct negative impact on refugees and asylum seekers who feel abused, disgraced, disrespected and threatened as a result of the negative public debates. Many asylum seekers and refugees and other migrants have bitterly complained of discriminative treatment and aggression from service providers in the social welfare offices, camp authorities, aliens offices, medical doctors and from neighbours. Many of them have developed a lack of trust and respect to the preaching of human rights because they do not think there is actually the existence of human rights in Europe in reality. The politicians and media are using the everyday problems of the society and pouring the blames on asylum seekers, refugees and other migrants to be the cause of the problems. This has weakened the asylum seekers in some cases like to raise complains.

In relation to the construction of camps in other countries, the legal question on sovereignty comes up again. Is it the countries bearing these camps or the EU as a

super power that has the rights to these camps? Although the impression is given that the different national states still have control over their internal affairs, part of their sovereignty is in the hands of the EU states. The EU states have come together like one state. This has caused all the member states to lose part of their sovereignty and now, because of the strong union, they are able to influence internal issues of other countries through the process of globalisation and extension of the EU borders over other independent states. The EU countries have employed other organisations to function in these countries where these camps are seen so that one cannot say they are directly involved. The sponsor of IOM to build camps in other regions of the world like in Libya and Ukraine are good examples. Or the activities of CARITAS Austria in Ukraine are an example to show that the EU has a hand in these regions. Though the EU tries to absorb their responsibility, they have employed international organisations and private enterprises as operative partners.

Though some asylum seekers, refugees and migrants have started movements to let their voices heard there must be a way forward to repair the damages already done. Looking at the negative impact the camp system has instituted on asylum seekers, refugees and other migrants, as seen in this work, one of the main objectives is to create a way forward to repair the already damaged images of these category of people who are mistakenly considered by a large part of the European population as the “unwanted people” of the society. The Flüchtlingsinitiative Brandenburg in Germany for example objectives are to “Struggle against the strong racist sentiments against the asylum seekers, refugees and other migrants on the streets, in the offices and in the laws and to improve the poor living conditions of asylum seekers.”⁷⁰³ This strategy of creating a way forward will build confidence between the public, politicians and media. It also will wipe the “Blind Spot” of Europe to enable a wider public of Europeans to realise the contributions of these people to the development of Europe; culturally, economically, politically and socially.

There should not be a humanisation of these camps but an immediate closure and a strong challenge to the art the EU states dodge international and human rights treaties by creating independent inhuman laws in their different countries to their favour.

⁷⁰³ Nsoh, Christopher Ndikum: Organisiert Euch! Die Flüchtlingsinitiative Brandenburg, In: Interface (Eds.): WiderstandsBewegungen – Antirassismus zwischen Alltag und Aktion, Berlin/ Hamburg 2005. p.127.

This work like other dissertations has opened a gateway to possible research topics to other researchers in future. From here on one can deduce the fact that the EU states are gradually shifting away from existing international instruments and other human rights treaties because of its protectionist culture. This is gradually rendering these treaties and international laws a “paper tiger” which is raising a lot of discussions from other parts of the world if it makes any sense to respect these instruments. One can research into the methods used by the EU countries to shift from these treaties that guarantee, security peace, human rights, respect and equality and the possible devastating consequences to the world.

This dissertation is concentrated on three main countries-Ukraine, Libya and Germany but there are other countries and regions of the world that these camps are found that are not treated in this work. Since these other regions were not touched, it is of prime importance for future researchers to carry on research on this field into these camps and the general conditions, functioning and structures of the camps and the behaviour of these people of the different countries towards exclusion and isolation of migrants and asylum seekers. Such camps are found in Tunisia, Algeria, Morocco and Tanzania.

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Abdel Amine, a former asylum seeker in Rathenow originating from Togo, on the 05.02.2007 in Berlin

Africans from Sudan and Eritrea, on the 18.03.2006 in Tripoli, Libya

(Group of) African asylum seekers living in Kiev, on the 10.05.2006 in Kiev

(Group of) African asylum seekers, on the 16.05.2006 in Kiev

(Some) African asylum seekers, who were formerly detained in Pavschino, on the 23.05.2006 in Kiev

(Two) asylum children living in Prenzlau, who are unable to continue their studies after haven finished the tenth class, on the 11.06.2004 in Potsdam during the Brandenburg Asylum seekers Conference in Potsdam.

Asylum seekers in the Flüchtlingsinitiative Brandenburg (FIB), on the 13.07.2007

“AIR Force“, after the interview for deportation in Cologne, on the 23.09.2007 in Eisenhüttenstadt, Brandenburg

A.M. from Bangladesh living today in Kiev, on the 20.05.2006 in Kiev

Ambassador “A” from an African country, February 2005 in Berlin

A.N. from Ethiopia, on the 24.03.2006 in Tripoli

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Antoine Fotso, member of FIB, on the 18.06.2004 in Rathenow, state of Brandenburg

Antoine of Cameroon on the manner the German state machinery is attempting to deport him and the whole family, on the 09.07.2007 in Hamburg

(An) asylum seeker in Ludwigsfelde, state of Brandenburg, on the 01.06.2004 in Ludwigsfelde

(An) asylum seeker in Neustadt/Dosse, on the 02.06.2004 in Neustadt/Dosse

(An) asylum seeker in Perleberg, on the 5.06.2004 in Perleberg

Asylum seekers from Rathenow, Frankfurt/Oder, Crussow, Prenzlau, Guben, Cottbus, Neustadt/Dosse, Kyritz, Neuruppin, on the 11. to 12. 06.2004 during the Brandenburg Asylum seekers Conference in Potsdam.

B.B., an African asylum seeker from the Democratic Republic of Congo, on the 24.05.2006 in Kiev

Becky, an asylum seeker from Nigeria, on the 06.01.2007 in Rathenow

Blaise, one of the Cameroonians in al-Jedad prison in Tripoli. This visit was done by three of us under close police surveillance. In order to protect the person who made us to visit the prison I have decided not to write the date because from the date, it will facilitate the possibility for the authority to know the name of the person. To enter the prison and detention camps, one person usually writes the name at the main entrance. That is what we did. The person living in Libya accompanied us to these camps and wrote the name.

Bruno, a former asylum seeker of the asylum home Lerchenstieg, Potsdam, state of Brandenburg, on the 7.06.2004 Lerchenstieg

B.S., from Cameroon, on the 23.03.2006 in Tripoli

B.S., a telephone interview on the 13.10.2006 from Germany

(A) Cameroonian minor, in the asylum camp at Birkengrund Ludwigsfelde, on the 10.01.2007 in Ludwigsfelde

(Group of) Cameroonian, on the 20.03.2006 in Tripoli

Cameroonians, Nigerians, Sudanese who have changed their names to survive, on the 21.03.2006 in Tripoli.

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C.D. from Nigeria, on the 21.03.2006 in Tripoli

(Some) Chadians who were detained in Kufra and Sebha detention facilities, on the 20.03.2006 in Tripoli

Charlie, an asylum seeker in the asylum home in Guben, on the 10.06.2004 in Guben

(Some) Citizens of Niger, on the 20.03.2006 in Tripoli

D.A., from Afghanistan, a former detainee of Pavschino, on the 23.05.2006 in Kiev

D.D., who was locked up in Misrata for one month, on the 02.04.2006 in Misrata, Libya, at their home

Discussion with my guide (informal interview) after a control from custom officers, on the 07.04.2006 in Tripoli

Discussion with some people from the Berber region who today formed the minority of the country, on the 14.03.2006 in Tripoli

D.S. from Sudan, on the 24.03.2006 in Tripoli

(Former) deportees from Sub-Sahara Africa on the 20.03.2006 in Tripoli

Detainees from different nationalities (Ghanaians, Cameroonians, Nigians, Nigerians, Sudanese, and Chadians), on the 20.03.2006 in Tripoli

(A former Pavschino) detainee from Angola on the 22.05.2006 in Kiev

Doro, a social pedagogue of Xenion, an institute in Berlin to treat traumatised people and other psychological problems, on the 10.08.2004 in Berlin

Douglas, an asylum seeker in the asylum home in Cottbus, on the 12.06.2004 in Cottbus

E., from Cameroon on his health situation, on the 22.03.2006 in Tripoli

E.M., living in Tripoli and coming from Cameroon, on the 21.03.2006 in Tripoli

E.M., a telephone interview on the 07.11.2006 from Germany

Endreas from Ethiopia, on the 21.03.2006 in Tripoli

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Eugenie, an African asylum seeker from the asylum home in Garzau, on the 06.09.2007 in Garzau, state of Brandenburg

F. and W., who were detained in the Sebha detention facility, on the 21.03.2006 in Tripoli.

Fallou Issa, an asylum seeker from Togo who was based in Rathenow asylum home, on the 23.11.2006 in Rathenow, in his hiding cloister.

(A) Female social worker in the asylum home in Waldsiedersdorf, state of Brandenburg, under Sozialpark MOL e.V. , on the 14. 06. 2004 in the asylum home

G.B. from Sudan, on the 24.03.2006 in Tripoli

(A) Ghanaian who attempted to reach the Island of Sicily but were sent back on the high seas by the EU marines, on the 20.03.2006 in Tripoli

(Group of) Ghanaians, on the 20.03.2006 in Tripoli

Hervais Tazo, an asylum seeker in Hennigsdorf, state of Brandenburg, on the 20.06.2004 in Hennigsdorf

Home administrator and a social worker of the asylum home in Perleberg, state of Brandenburg, June 2004 in the asylum home

(Group of) Immigrants from Niger, on the 26.03.2006 in Tripoli

J. from Cameroon, on the 21.03.2006 in Tripoli

J. from Ghana, on the 20.03.2006 in Tripoli

Jean Claude, member of the initiative of asylum seekers in Brandenburg (Flüchtlingsinitiative Brandenburg, FIB), on the 14.06.2004 in Lerchenstieg, Potsdam

J.J., a former detainee of Lutsk facility, on the 22.05.2006 in Kiev

Joseph, an asylum seeker in the asylum home in Waldsiedersdorf, on the 14.06.2004 in Waldsiedersdorf

Jude, an asylum seeker from Cameroon living in Hennigsdorf, on the 04.01.2007 in Hennigsdorf

Julien, a former asylum seeker of Rathenow, on the 11.06.2004 in Berlin

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K. from Cameroon, on the 23.03.2006 in Tripoli, Libya

Kamga, on the Flüchtlinginitiative Brandenburg demonstration on the 3rd of August 2007 in Forst

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Kanavanga Emmanuel, working with HIAS Ukraine, on the 24.05.2006 in Kiev

KD, a Berber in Libya who was demonstrating the suppression they undergo in Libya, on the 29.03.2006 in Tripoli

Kenneth, on the 20.11.2006 in Tripoli, Libya

Kerry, Ibrahim, former asylum seeker in Garzau, on the 10.07.2007 in Berlin

K.G. from the Democratic Republic of Congo, on the 07.04.2006

K.K. from the Democratic Republic of Congo , a telephone interview on the 07.11.2006 from Germany

Koku, Kweku and Sunday, three Ghanaians, after about two years moving from one prison to another, on the 07.04.2006 in Tripoli

(A) Lady from Nigeria, on the 24.03.2006 in Tripoli

(A) Libyan authority of the RMC in Libya, on the 24.03.2006 in Tripoli

Lorian, an asylum seeker from the Democratic Republic of Congo who is now resettled in USA, on the 24.05.2006 in Kiev

Louise, a Cameroonian asylum seeker based in Perleberg, state of Brandenburg, on the 11.07.2007 in Perleberg.

(Mr) M., an asylum seeker from Cameroon, on the 22.12.2006 from Berlin with a telephone call

Mams, from the Democratic Republic of Congo, a former detainee from three different detention camps (in Lutsk, Uzhorod and Pavschino), on the 23.05.2006 and 25.05.2006 in Kiev

M.T., an asylum seeker from Nigeria, on the 25.05.2006 in Kiev

Bibliography

Müller Wolfgang, former director of Migration Management, CARITAS Austria, on the 13.05.2006 in Mokachivo, Ukraine

Ngoma, an asylum seeker in the asylum home in Hohenleipisch, state of Brandenburg, on the 12.06.2004 in Hohenleipisch

Ndingi, an asylum seeker living in an asylum home in Birkengrund in Ludwigsfelde, state of Brandenburg, on the 03.06.2004 in Birkengrund

(A) Nigerian who claimed to be the friend of the guy who was attacked, narrated the story on the 24.03.2006 in Tripoli.

(Group of) Nigerians, on the 29.03.2006 in the Madina market in Tripoli

(Some) Nigerian women from the Sebha detention facility, on the 01.04.2006, in Tripoli

(Three) Nigerians caught in Kufra, on the 08.04.2006, in Kufra

NN from Chechnya living in Ukraine without official documents, on the 23.05.2006 in Kiev

(An) Old man from Kosovo, on the 05.06.2007 in Perleberg

Papie from the Democratic Republic of Congo, a former detainee from Lutsk, on the 24.05.2006 in Kiev

Patrick, a Cameroonian living in the asylum camp in Blankenburg, Lower Saxony, on the 15.12.2006 in Blankenburg

P.P. from Cameroon who changed the name, on the 21.03.2006 in Tripoli

Pertula, living in an asylum home in Perleberg, state of Brandenburg, on the 05.06.2004 in Perleberg

Ralph from Cameroon, on the 27.03.2008 in Berlin

“S.”, a German researcher who visited Libya, after her trip back, on the 06.11.2005 in the office of Forschungsgesellschaft Flucht und Migration (FFM) in Berlin

S.B. from Afghanistan who is today living in Kiev, on the 23.05.2006 in Kiev

Solomon from Liberia, on the 10.05.2006 in Pavschino

Bibliography

(Group of) Somalian who were detained in Kufra facilities for over ten months in very inhuman conditions, on the 24.03.2006 in Tripoli

(A) Sudanese who narrated his unsteady state of mind from the reason of his flight to his flight destination, on the 21.03.2006 in Tripoli

(A) Sudanese who ran away from the war and was detained in Sebha for over six months, on the 07.04.2006, in Tripoli

S.Z. from Cameroon, on the 23.03.2006 in Tripoli

T. B. from Angola, who has lived in Ukraine for about fifteen years and who was my translator and accompanied me to so many offices in Ukraine, a telephone interview on the 16.07.2006 from Germany

Thomas, an asylum seeker living in Ludwigsfelde, on the 12.06.2004 in Ludwigsfelde

T.T. from Cameroon, a married man who has never moved together with his wife, on the 23.03.2006 in Tripoli

UNHCR Ukraine, Simone Wolke and Natalia Prokopchuk, on the 16.05.2006 at the UNHCR head office in Kiev

UNHCR Libya, on the 29.03.2006 in the head office based at Tripoli, Libya

V, a military officer at Lutsk facility, on the 12.05 2006 in Lutsk

(A) Women from sub-Sahara Africa on the 25.03.2006 in Tripoli

W.Z. from Chad, on the 24.03.2006 in Tripoli

Ziel, Alwin, former minister of labour, social affairs, health and women affairs of the state of Brandenburg, 2000 in a visit to Rathenow in the main administrative building

Appendix

Questionnaire

This questionnaire is designed in relation to the different authorities, asylum seekers, detainees, former detainees and refugees I met on the field. It is related to the exclusion and externalisation policies of asylum seekers and migrants who are found in asylum camps EU states and extra-territorial asylum camps strongly influenced by the EU states but found beyond its immediate borders and in other regions of the world.

The questionnaire is divided into two main parts. One is directed to asylum seekers and detainees meanwhile the other one is to different authorities.

A: Questions to Asylum Seekers, Refugees Detainees and Former Detainees

- Will you like to answer as individual or in a group?
- If it is a mixed group, should it be a mixed group of men and women, a group of men or a group of women?
- What is (are) your sex (es)? Male or Female?
- What is your marital status, single, separated, married or divorced?
- Why did you flee your home country? Racial problem, political, religious, poverty environmental degradation problems, or humanitarian problems?
- Which means of transportation did you use, by air, by road or by water?
- How old are you?
- How long have you been on your way before arriving this destination?
- Were you in a group?
- Did you have children with you when you started the journey?
- How long have you been detained?
- When did you file in your asylum case?
- Were you transferred from another refugee camp in another country to where you are found? (If yes, where)
- When you arrived in this camp, were you provided with a translator, counselor, legal assistance or your rights in general?
- How many of you live in this room?
- Are you allowed to go out of the camp/detention center?
- Do you have a sport ground?

- Do your children go to school, learn the language, or support from social welfare workers?
- How long after your application for asylum have you been kept in this camp?
- Do you feel all the necessary information concerning asylum has been given to you?
- Are kept in a room according to nationality or mixed up with other nationalities?
- How often do they change your beddings?
- Do you have a telephone in your camp?
- How often do you speak with your family members and friends back at home?
- Can you go to a relaxation event like a cinema or football match?
- Are you allowed to have visitors?
- Where are the camps located?
- Do you have easy access to transportation?
- Do you have contacts with people in the country you live?
- Who are the people taking care of you, military officials or civilians?
- Are you usually maltreated by the military personnel?
- Do you have freedom of communication?

- When you are sick, who takes care of you?
- Are you taken to a doctor or do they allow you go to a medical doctor?
- When you go to a doctor, do you use the the services of an interpreter?
- Who pays for the medication and medical treatment?
- Did a doctor examine you when you arrived here?
- If it is difficult to visit a doctor, can you explain how and why?
- Do you have the possibility to see another official in case of a problem or an issue arising?
- Are there enough toilets?
- Do men have their own section of the toilet and bathing room?
- Do you feel sexually molested in this environment?

- Do the authorities give you money for food?
- Do they cook for you or you cook for your self?
- If they cook for you, are you satisfied with their food?
- Do you have a variety of food?
- How is the food served to you?

- Do you work in this camp?
- Are you paid if you work?
- Have you got a work permit?
- Can you work out of the camp?

- Do you go to school?
- Do you have the opportunity to learn the language?
- Is the school in the city or in the camp?
- Do you learn with other normal citizen of this country?
- Do you have to buy your books and other school marterials?

- Do you have the freedom of movement?
- Do you feel discriminated by the common man on the street?
- Are you often controlled by the police or military officers?

- In course of deportation, were you maltrated by the police or military officials?
- Were carried to your country of origin?
- Did you go through a judicial procedure before you were put under deportation?

B: Questions to Authorities, camp Authorities, Social Workers, Military Officers and Institution Caring for Asylum Seekers

- Can you describe the the living conditions of asylum seekers, refugees and migrants detained in a camp?
- Can you describe the the living conditions of asylum seekers, refugees and migrants kept in the camp?
- How do you communicate with the asylum seekers or detainees Locked up or kept in these camps?
- What about the conditions of children living there, is it healthy for children to be either detained in a camp or kept in an asylum home with adults?
- What possibilities do children in asylum camps or detention camps have to play? What situation exist in homes without play ground and relaxation toom for children?
- In what ways are you controlled by other institutions to see that your work is well done?

- How is the privacy of the asylum seekers or detainees respected? Example, not entering the room without knocking, not opening their letters?
- Are the asylum seekers or detainees allowed to have visitors, for how long and under which conditions, if yes?
- What are the forms of control asylum seekers and detainees are allowed to undergo?
- What intention is behind keeping asylum camps or detention camps far away in the city and either in the desert or in the forest?
- Is there a designated number of social worker designed for a specific number of asylum seeker or detainees in any of this accommodation?
- Do you carry on control to see that before these camps are eliminated, the conditions set by international laws are respected in these camps?
- Are aware of any measurement of space a detainee or asylum seeker is supposed to occupy?

Certification

I, Christopher Ndikum Nsoh, hereby certify that the above dissertation to the best of my knowledge is true. I further certify that I have researched and written this dissertation without any outside help. Any assistance I had is pointed out at the appropriate place within this dissertation.

The finished dissertation is for the very first time deposited only at the Freie Universität, Berlin.

Place and date of signature: Berlin, 2nd of June 2008