

**REVIEW OF STATES' PROCEDURES AND
PRACTICES RELATING TO DETENTION OF ASYLUM SEEKERS¹**

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FINAL REPORT**

*Prepared for the Lawyers' Committee for Human Rights
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TABLE OF CONTENTS

	<u>Page</u>
Australia.....	3
Austria.....	9
Bangladesh.....	12
Belgium.....	13
Bulgaria.....	16
Canada.....	19
Côte D'Ivoire.....	23
Cyprus.....	24
Czech Republic.....	25
Denmark.....	27
Egypt.....	30
Finland.....	31
France.....	33
Germany.....	35
Greece.....	38
Guatemala.....	41
Guinea.....	42
Hungary.....	43
Indonesia.....	45
Iran.....	47
Ireland.....	48
Israel.....	51
Italy.....	55
Japan.....	57
Kenya.....	59
Republic of Korea (South Korea).....	60
Lithuania.....	62
Luxembourg.....	65
Malaysia.....	67
Mexico.....	69
Nauru.....	71
Nepal.....	72
The Netherlands.....	73
New Zealand.....	76
Nicaragua.....	83
Norway.....	85
Pakistan.....	87
Papua New Guinea.....	88
Poland.....	89

TABLE OF CONTENTS

	<u>Page</u>
Portugal	91
Romania	92
Russia	94
Senegal	97
Slovak Republic	98
South Africa	100
Spain	103
Sweden	106
Switzerland	108
Thailand	110
Uganda	112
United Kingdom	113
United States of America	119

The Lawyers Committee for Human Rights, concerned about the increased use of detention and the failure of some states to implement effective procedural protections for detained asylum seekers, initiated this comparative examination of the detention procedures of states. The review is directed primarily at the legal procedures governing detention of asylum seekers and in particular at the absence or existence of measures—such as judicial review, limits on the length of detention, periodic review, and legal representation—that might help to prevent arbitrary detention in individual cases.

The Lawyers Committee asked the law firm of Debevoise & Plimpton, a New York-based international firm that has extensive experience in pro bono representation of asylum seekers, to undertake the review of states' detention procedures for asylum seekers.¹ In conducting the review, the Debevoise attorneys requested specific information from states and from non-governmental organizations, and also consulted the excellent reports previously issued by Amnesty International, the European Council on Refugees and Exiles, the Danish Refugee Council, Human Rights Watch, the U.S. Committee for Refugees, other international and national non-governmental organizations, and UNHCR.²

¹ This review and resulting report was prepared by Min Jung Lee, Marjorie Menza, Emily O'Connor, Jaya Ramji, Suzanne Spears, Jennifer Spiegel, Eileen Suh, and Mateo Taussig-Rubbo, all of Debevoise & Plimpton, and Tasha Lackman, Anna Mecagni, Troy Selvaratnam, and Zeina Mobassaleh of the Lawyers Committee for Human Rights. The report was edited by Eleanor Acer at the Lawyers Committee. Diane Cohen, Timothee Gagnepain, Emily Goldberg, Hessam Kalantar, Chrystiane Pereira, Alexandra Perina, Emily Pierce, Thomas Reilly and Melissa Tidwell of Debevoise & Plimpton provided editing assistance. The Lawyers Committee extends its deepest appreciation, both to the firm of Debevoise & Plimpton and to the individual attorneys who assisted on this project, for their excellent work.

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A paper examining the findings of this review has been prepared by the Lawyers Committee for Human Rights. That paper, entitled “Detaining Those Who Seek Refuge: A Comparative Examination of State Procedures,” is available on the Lawyers Committee’s website.

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AUSTRALIA

Australia is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. The Australian Migration Act of 1958 (as amended) and the Regulations issued pursuant to that Act is the legislation that covers all aspects of migration to Australia, including the treatment of refugees, and is considered one of the country's most complex laws.²

During the year 2000-2001, Australia received 13,076 on-shore applications for refugee status, and issued 5,579 grants of asylum ("Protection Visas" as they are technically termed).³ Only 1,127 of the Protection Visas granted that year were Permanent Protection Visas (PPVs), which bestow permanent resident status, while 4,452 were Temporary Protection Visas (TPVs), which permit residence for three years.⁴ Unlike PPVs, TPVs do not grant refugees the right to family reunification, the right to return if they leave Australia, or the right to settlement services and welfare benefits.⁵ In the first quarter of 2002, 1,580 applications were filed.⁶

Only asylum seekers who enter the country with valid visas are initially eligible for PPVs.⁷ Those who arrive without valid visas are not eligible for PPVs until thirty months after they have received TPVs, at which time they must prove their asylum claims again to be successful.⁸ Asylum seekers who arrived after September 27, 2001, and who spent more than seven days en route through nations where they could have sought and obtained effective protection are never eligible for PPVs and may only reapply for three-year TPVs, a process which also requires them to re-substantiate their need for protection.⁹

In 1992, Australia instituted a policy of mandatory detention of all people, including asylum seekers, who arrive in the country without proper travel documents.¹⁰ Detention is immediate and automatic, meaning that charges are not brought, and appearances before magistrates or courts to decide if detention is absolutely necessary or appropriate are not permitted.¹¹ Detention is also indefinite in its duration—lasting anywhere from a few hours to a few years—as it must continue until asylum seekers are accepted as refugees or deported in all but a rare number of situations.¹² By contrast, people who enter Australia on valid visas and who then claim protection as refugees are not usually detained.¹³

The Australian government claims that asylum seekers spend an average of four and a half months in detention while their asylum claims are being processed.¹⁴ Of the 13,015 applications for Protection Visas filed between July 2000 and June 2001, 4,490 were by detained asylum seekers.¹⁵ Of the 12,713 applications filed between July 1999 and June 2000, 4,371 were by detained asylum seekers.¹⁶ Using a "snapshot" approach to

statistics, which has also been criticized, the Australian government reported that there were fewer than 3,000 immigrants detained in October 2001.¹⁷

The United Nations High Commissioner for Refugees, numerous NGOs, and Australia's Human Rights and Equal Opportunity Commission have criticized Australia's mandatory detention policy.¹⁸ In the case of an asylum seeker who was detained for a period of over four years, the United Nations Human Rights Committee found Australia's detention policy to be arbitrary in practice.¹⁹ A number of Australian health professionals have raised concerns about the negative mental health implications of detaining asylum seekers and NGOs have decried the dismal conditions in Australia's six immigrant detention facilities.²⁰ Detention centers, most prominently the Woomera Immigration Reception and Processing Centre, have been the sites of hunger strikes by asylum seekers protesting lengthy delays in processing their applications and mistreatment.²¹

Since 1994, detained asylum seekers have been allowed to apply to the Minister for Immigration and Multicultural and Indigenous Affairs for "Bridging Visas" to gain release from detention pending the outcome of their applications for Protection Visas.²² But, while the Minister must decide whether to grant requests for Bridging Visas within two days, his power is discretionary and he very rarely grants such requests.²³ Detained asylum seekers granted Bridging Visas must be interviewed by officers appointed by the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs ("DIMIA") and may be required to lodge security before their release from detention.²⁴ Those deemed likely to abscond are not eligible for Bridging Visas or release from detention.²⁵

Asylum seekers who arrive with valid visas but file applications for Protection Visas after their visas have expired are eligible to apply for "Class C" Bridging Visas. Asylum seekers with such visas may be granted permission to work upon their release from detention in very exceptional circumstances.²⁶ Asylum seekers who arrive without valid visas are only eligible to apply for "Class E" Bridging Visas, which are reserved for minors, the elderly, applicants with special medical needs, and applicants married to Australian citizens or permanent residents.²⁷ These categories are very limited in practice. For example, between 1994 and 1998, only two children arriving as boat people or born in detention were released out of a total of 581.²⁸ The release of people on the basis that they are elderly, meaning over the age of 75, is also rare, since few elderly people travel to Australia by boat or otherwise without authority. And, even in the case of people affected by past torture or trauma, the presumption is in favor of continued detention.

In response to an increase in the number of people trying to reach the country by boat in recent years and the infamous "Tampa" incident, in which the government refused landing to a Norwegian vessel whose passengers included a boatload of asylum seekers it had rescued, the Australian government has established a so-called "Pacific Solution".

Since September 2001, it has made a number of amendments to the Australian Migration Act intended to “reduce incentives for people to journey to Australian territories” that have alarmed asylum seekers and their advocates.²⁹

New legislation removes or “excises” certain parts of Australian territory from the migration zone, including the Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands, offshore sea and resource installations and potentially a number of other areas in the future.³⁰ Undocumented persons who enter Australia at these places are subject to mandatory detention and are no longer allowed to apply for Australian visas of any class unless the Minister for Immigration and Multicultural and Indigenous Affairs finds that it is in the public interest to grant them permission to apply for TPVs.³¹ The Minister is to consider alternatives for resettling those granted asylum in other countries before contemplating granting them access to visas that would allow residence in Australia.³²

New legislation also provides that immigrants who arrive at excised offshore places or are intercepted in international waters may be taken to countries other than Australia that have been “declared” by the Minister for Immigration and Multicultural and Indigenous Affairs as countries that have appropriate arrangements in place to prevent *refoulement* of refugees.³³ Currently, Nauru and Papua New Guinea are declared countries.³⁴ Persons transferred to and held in Nauru and Papua New Guinea are labeled “transitory persons”, and are ineligible for any class of Australian visa, including Bridging Visas, without the exercise of discretion by the Minister.³⁵ Under agreements concluded between the government of Australia and the governments of Nauru and Papua New Guinea, approximately 1800 asylum seekers who were intercepted en route to Australia were detained as of March 2002 in those two declared countries.³⁶ During the summer of 2002, the Minister granted 3-year Temporary Protection Visas to 56 asylum seekers from Nauru³⁷ and 42 from Papua New Guinea, almost all of whom had immediate family members in Australia.³⁸ (See chapters on Nauru and Papua New Guinea below).

Is there independent review of the detention decision? No.

Decisions to detain asylum seekers within the Australian migration zone are not subject to judicial review, except in the very narrow sense that a court may conduct a factual inquiry as to whether a given detainee was in fact in the country “unlawfully” at the time she was detained and on very narrow constitutional grounds.³⁹

As noted above, asylum seekers detained for lack of proper travel documents may only be released if they have been granted Australian visas. An October 2001 amendment to the Migration Act sought to significantly reduce the right to judicial review of visa decisions.⁴⁰ This legislation is currently being challenged in the High Court of Australia.⁴¹

Although the 2001 legislation made judicial review of visa and asylum decisions largely futile, the government maintains that, in providing asylum seekers whose refugee assessments are unfavorable access to merits review by the Refugee Review Tribunal, it complies with the UNHCR's guidelines, which suggest that asylum decisions be subject to at least one level of review, either administrative or judicial.⁴²

Are there limits on the period of detention? No.

Once asylum seekers have been detained, they are not eligible for release until they are granted Bridging Visas, TPVs or PPVs, or are to be deported.⁴³ There are no time limits on detention pending visa decisions, asylum decisions, or removal once asylum applications have been rejected. Detention is, therefore, potentially indefinite. The UN Human Rights Committee found Australia in breach of the International Covenant on Civil and Political Rights for having detained one asylum seeker for more than four years.⁴⁴

Is there periodic review of detention? No.

There is no automatic or independent review of continuing detention.⁴⁵ The Minister for Immigration and Multicultural Affairs may, in very limited circumstances, exercise his non-enforceable discretionary power to grant detained asylum seekers' applications for Bridging Visas where primary decisions on their asylum applications have not been made within six months or where they are found to meet the eligibility requirements for a Class E Bridging Visa.⁴⁶ However, he rarely chooses to exercise such power.

Is there access to government-funded legal aid? Limited.

Asylum seekers who arrive without valid visas are initially placed in "separation detention" for indefinite periods during which they are denied access to legal advice, news coverage, visitors and phone calls.⁴⁷ Although there is no statutory basis for separation detention, DIMIA claims it is necessary to enable the Department to determine whether given asylum seekers are persons who "prima facie invoke Australia's protection obligations"; although, there is likewise no statutory basis for DIMIA making such a preliminary determination.⁴⁸ Asylum seekers deemed not to meet this test are "screened out," meaning that they are not permitted to apply for asylum in Australia, and are detained until arrangements can be made for them to leave the country.⁴⁹ Persons deemed to meet the test are "screened in", meaning that they are permitted to apply for asylum, and are detained until their asylum claims are adjudicated.⁵⁰

The Immigration Advice and Application Assistance Scheme (IAAAS) provides application assistance to screened in Protection Visa (PV) applicants in immigration detention.⁵¹ However, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is under no legal obligation to inform detainees of their right to counsel

or of the availability of government funded counsel.⁵² The amount of information provided varies, therefore, from center to center.⁵³

Under the IAAAS, the Australian government contracts staff members of various legal aid and private law offices as migration agents to advise and assist screened in asylum seekers detained within the migration zone in the preparation, filing and presentation of their visa applications. IAAAS assistance is available to those who qualify for it free of charge from the primary decision through the merits review stages, but is not available for applications for judicial review.⁵⁴ Migration agents must possess a “sound knowledge of migration law and procedure” but are not required to hold legal qualifications.⁵⁵ As IAAAS service providers are paid through DIMIA, concerns have been raised about a potential conflict of interest with their clients’ needs, and the quality of advice provided.⁵⁶ Even for those who are eligible for IAAAS assistance, access to legal assistance is often limited by the remoteness of their detention centers.⁵⁷ Although screened in asylum seekers are allowed to make phone calls, in some centers they must pay for calls themselves.⁵⁸

Alternatives to detention: None.

In 1994 the Australian Parliament’s Joint Standing Committee on Migration (JSCM) examined the appropriateness of the government’s detention policy and considered alternative options, such as supervised release to community groups.⁵⁹ The Committee expressed doubt that any alternative could ensure that released asylum seekers would not abscond during the processing of their applications.⁶⁰ It rejected the notion that a community release program would be more cost effective than immigration detention, questioned the ability of community groups to adequately care for released detainees, and insisted that requiring asylum seekers released into the community to carry identity cards to minimize the risk of absconding would be contrary to Australian values of individual freedom and open society.⁶¹ Based on the Committee’s findings, the government renewed its commitment to mandatory detention of all undocumented migrants and rejected all alternatives.⁶²

According to DIMIA, only “[d]etention ensures that unlawful non-citizens are available for processing and, where necessary, removal.”⁶³ Release, by contrast, “could inadvertently lead to people achieving their objective of remaining in Australia, regardless of whether or not they were ultimately found to be in need of protection under the Refugees Convention (or were found to be eligible for some other visa)”, which “in turn would send a strong signal to people smugglers and potentially encourage more families to risk their ...lives ...to travel to Australia unlawfully.”⁶⁴

Vulnerable groups: Some alternative detention arrangements.

Mandatory detention of those without valid visas seeking asylum in Australia applies to everyone, including children.⁶⁵ In 2000-2001, 1103 children were held in Australian immigration detention centers.⁶⁶ In May 2002, there were 168 children under the age of 18 in Australian detention centers, including 12 in the Woomera Project and 15 in the Adelaide foster care program.⁶⁷ As of June 2002, only one unaccompanied child had been released from detention and placed in foster care upon being granted a “Class E” Bridging Visa at the discretion of the Minister for Immigration and Multicultural and Indigenous Affairs.⁶⁸

Although there are no alternatives to detention, DIMIA maintains that “[w]ithin the mandatory detention framework and consistent with the Act, however, the Department takes innovative approaches to alternative detention arrangements.”⁶⁹ These arrangements purportedly seek to respond to the needs of particular groups, such as women and children and unaccompanied minors.⁷⁰ Alternative places of detention include the Woomera Residential Housing Project and foster care arrangements undertaken in conjunction with the State child welfare authority.

The Woomera Alternative Detention Arrangements for Women and Children Project, launched in August 2001, permits up to 25 volunteer women and children detained in the Woomera Immigration Reception and Processing Center (IRPC) to live in four supervised houses that they run themselves outside of the center.⁷¹ Those eligible for the program include women with children who have family members remaining at Woomera; their female children of any age; and their male children of under 13 years of age. Participants may visit each other but must arrange with authorities for other people to visit them. Some fathers remaining at the IRPC have reportedly been allowed to visit their participating families.⁷² As they are still detained, participants are only permitted to leave their cluster of houses to go on “supervised excursions to community facilities.”⁷³ Children in the Project participate in the IRPC education program although DIMIA is assessing the possibility of enrolling them in local schools.⁷⁴ During its first month of operation, only thirteen people opted to participate in this “home detention” program, presumably because most families were reluctant to be split up.⁷⁵

DIMIA complains that other “alternative places of detention, such as fostering arrangements, are costly to implement”, entail “complex administrative and legal ramifications,” and are limited by “the availability of culturally appropriate families.”⁷⁶ However, the Department has made a few such arrangements where special circumstances existed and the State child welfare authority was able to provide assistance. For example, in January 2002, to protect them from incidents of self-harm and hunger strikes, the Minister removed nine unaccompanied minors from the Woomera IRPC to alternative places of detention in foster care arranged by the South Australian Department of Human Services.⁷⁷

Australia is a party to the United Nations Convention on the Rights of the Child. The Australian Minister for Immigration is entrusted with the guardianship of all non-citizen unaccompanied minors, but has largely delegated guardianship responsibility for detained minors to the DIMIA managers of detention facilities and for released minors to state child welfare agencies.⁷⁸ DIMIA has issued guidelines concerning the protection of unaccompanied minors, but they are non-binding and unenforceable.⁷⁹ Detained children participate in school classes and recreational activities inside the centers and in some cases outside them.⁸⁰ Women and children are not always provided with separate accommodation.⁸¹

Children who have already suffered the trauma of fleeing their homes and human rights abuses in their home countries have witnessed and participated in traumatic events in Australian detention centers, such as detainees rioting and sewing their lips together in protest of their prolonged detention.⁸² Children have also suffered when guards have responded with tear gas or late night spot checks.⁸³ Allegations of child sexual abuse in the Curtin Detention Center in 2000 highlighted the dangers of detaining children in cramped conditions with adults, many of whom suffer from depression and post-traumatic stress disorder.⁸⁴

In March 2001, the Commonwealth Ombudsman's Office issued a formal report on Immigration Detention Centers that contained a number of recommendations to DIMIA for improvements in arrangements for children.⁸⁵ In late November 2001, Australia's Human Rights Commissioner, Dr. Sev Ozdowski, announced that the Human Rights and Equal Opportunity Commission would be conducting a national inquiry into children in immigration detention, the results of which he hoped to present to Australia's Parliament by the end of 2002.⁸⁶ As of August 2002, the Commission had received more than 300 submissions from organizations critical of Australia's treatment and detention of asylum seeker children.⁸⁷ In addition to considering public submissions, the Commission has visited all of Australia's immigration detention facilities—including on Cocos and Christmas Islands—and has conducted public hearings in the states where such facilities are located.⁸⁸ In 2002, Amnesty International and Human Rights Watch, among other non-governmental organizations, criticized Australia's detention of unaccompanied minors as a violation of its international treaty obligations.⁸⁹

AUSTRIA

Austria is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the major United Nations human rights instruments and to the European Convention on Human Rights. Austria's asylum procedure is governed by the country's 1997 Asylum Act.⁹⁰

In Austria, 8,269 asylum applications were lodged during the first quarter of 2002, 30,140 during the year 2001 and 18,280 during the year 2000.⁹¹ The Federal Refugee

Office, an agency within the Interior Ministry, is responsible for making decisions on asylum applications in the first instance. Asylum seekers may appeal negative decisions to the independent Federal Asylum Review Board and make further appeals within the administrative courts.⁹²

Information on the number of asylum seekers in detention is not available. However, Austria has perhaps the strictest detention policy in Europe, with most immigrants who arrive without valid travel documents being detained until they are formally admitted into the asylum determination process.⁹³ Those who arrive at airports or directly from the countries they are fleeing are subject to pre-admissibility detention in border control areas pending decisions by the Federal Asylum Office as to whether they will be admitted to the asylum application process, decisions that must be made within 5 days.⁹⁴

Asylum Officers generally admit those who arrive with proper documentation to the asylum procedure, grant them provisional residency rights and release them from detention.⁹⁵ However, those who arrive without proper documentation are only admitted to the asylum procedure, granted provisional residency rights, and released from detention if Asylum Officers find that their applications are not “manifestly unfounded” (see discussion below).⁹⁶

Asylum seekers who arrive at Austrian land borders from third countries without proper documentation are refused entry and must await decisions on their applications outside Austria.⁹⁷ Asylum seekers who are apprehended after having entered the country illegally do not have provisional rights of residency and thus may be subject to detention.⁹⁸ The majority of asylum seekers reportedly enter the country illegally and apply for asylum once inside.⁹⁹

Asylum seekers, whether they have arrived with valid documents or not, who are deemed likely to abscond if they are denied asylum are not granted provisional residency rights and are not released from detention pending adjudication of their claims.¹⁰⁰ Such detentions may last for 2 months, with the possibility of single 4-month extensions.¹⁰¹

Austria has come under considerable criticism for subscribing to the “safe third country” concept.¹⁰² According to the 1997 Asylum Act, an application for asylum is considered “manifestly unfounded” if, inter alia, the claimant was already safe from persecution in a “safe third country” before coming to Austria, or if the asylum seeker comes from a so-called “safe country of origin.”¹⁰³ Austria considers third countries as safe for the return of asylum seekers if they: are signatories to the UN Refugee Convention and the European Convention Human Rights; have established asylum procedures, including a system for appeals; allow returning asylum seekers to utilize that procedure; and allow them to remain in the country safely while awaiting the outcome of their status determinations.¹⁰⁴ If the asylum request is deemed “manifestly unfounded” after the initial review, a decision not to admit the application to the normal asylum procedure

must be taken without further investigation, appeals are often denied suspensive effect and deportation rapidly follows.¹⁰⁵

A 1999 amendment to the Asylum Act authorized the Ministry of Interior to draw up a “white list” of “safe third countries”, drawing sharp criticism from human rights and refugee advocacy groups, on the grounds that it compromises the principle of individual investigation of claims.¹⁰⁶ The High Court upheld the principle in February 1999 and March 2000 rulings, when it reversed a denial of asylum made on the basis of the “safe third country” rule.¹⁰⁷ The asylum law was amended again in July, 2001, but only minor procedural improvements were made.¹⁰⁸

According to the U.S. Committee for Refugees, a startlingly large and growing number of asylum seekers are being denied admission to Austria’s asylum procedure on the basis of their applications being “manifestly unfounded” in accordance with the safe country rule.¹⁰⁹ Others are being denied asylum on the same grounds.¹¹⁰

Is there independent review of the detention decision? No.

Appeals are limited to substantive review of decisions related to admissibility.

Are there limits on the period of detention? 5 days on pre-admissibility detention and 6 months on post-admissibility detention.

Pre-admission detention at the airport is limited to five days, during which admissibility decisions must be made. Asylum seekers arrested after attempting illegal entry or because they lack provisional residency rights may be held in administrative detention for up to six months even after they have applied for asylum. Detention to ensure the removal of rejected asylum seekers is limited to six months.¹¹¹

Is there periodic review of detention? No.

Is there access to government-funded legal aid? Limited.

The police are not required to inform asylum seekers of their right to counsel, and refugee advisors are not provided with lists of detainees. It is estimated that twenty-five percent of detainees in Vienna do not receive any legal assistance or information.¹¹²

State funded lawyers are provided only to those asylum seekers who file appeals to the Higher Administrative Court and cannot afford their own lawyers.¹¹³ Under the “Schubhaftbetreuung” program, the Minister of the Interior retains a limited number of refugee advisors, drawn primarily from NGOs, to visit jails to provide information to detainees about legal proceedings. They are not authorized to provide legal assistance, however, but rather to refer asylum seekers to NGOs that do so. Lawyers reportedly have

limited or no access to their detained clients. Most jails allow two to three visits per week during specific hours, while some prohibit all such contact.¹¹⁴

Alternatives to detention: Reporting requirements, open centers and directed residence.

According to the Asylum Act, if more lenient alternatives to detention exist, authorities should exhaust them before detaining asylum seekers.¹¹⁵ All applicants for asylum who are not detained must register their addresses with federal authorities. Those able to prove their identities and provide financial information may qualify for accommodation, food, medical care, pocket money, clothing and school supplies until decisions have been made on their asylum claims. However, to receive such assistance they must reside in one of several federally-operated accommodation centers, a federally-contracted private pension, or other federally-contracted accommodations.¹¹⁶

The Aliens Police may also order asylum seekers to reside in hostels or hotels with frequent reporting obligations as an alternative to detention. If such asylum seekers fail to comply with reporting requirements, they may be detained.¹¹⁷

Vulnerable groups:

Austria detains certain unaccompanied minors, including children under 14, pending their deportation, provided that appropriate facilities are available.¹¹⁸ A Youth Welfare Agency acts as legal representative to unaccompanied minors in their applications for asylum.¹¹⁹

BANGLADESH

Bangladesh is not a state party to the United Nations Convention Relating to the Status of Refugees or its Protocol. It is a state party to the International Covenant on Civil and Political Rights (ICCPR), but not to its First Optional Protocol. Bangladesh has no asylum law, and protection of asylum seekers is subject to executive decisions of the Ministry of Home Affairs.¹²⁰

All individuals who enter Bangladeshi territory without valid entry papers are arrested and detained by law enforcement.¹²¹ The Bangladeshi government does not record how many people request asylum in the country and claims that there were no asylum seekers detained in 2000 and 2001.¹²² According to the USCR, Bangladesh hosted as many as 122,000 refugees at the end of 2001.¹²³

Is there independent review of the detention decision? No.

According to the Code of Criminal Procedure, an individual detained for entering the country without proper documentation must be brought before a court within 24 hours of her detention.¹²⁴ The court determines whether the individual entered without valid

documents and can direct deportation. However, the U.S. State Department reports that authorities, including the police, often do not bring detainees to courts within 24 hours.¹²⁵

Are there limits on the period of detention? No.

Is there periodic review of detention? No.

Is there access to government-funded legal aid? Limited.

Under the Legal Aid Act of 2000, the government must make legal aid available upon application to asylum seekers in financial need. However, NGO reports indicate that the Legal Aid Act is not yet fully operational, there is no effective access to legal aid, and most detainees are not made aware of their right to obtain legal aid.¹²⁶ In fact, some reports indicate that the Bangladeshi government has barred UNHCR and NGOs from assisting new arrivals.¹²⁷

Alternatives to detention: None.

Asylum seekers are detained in jails.¹²⁸ Children are sent to homes, where they are under the protection of the Ministry of Social Welfare.¹²⁹

Vulnerable groups:

Children in custody fall under the provisions of the “The Children Act of 1974.”¹³⁰ As noted above, child asylum seekers are sent to homes.

BELGIUM

Belgium is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Belgium’s asylum procedure is governed by the country’s Aliens Law, which divides it into an admissibility phase and a substantive phase.¹³¹

During 2000, 42,691 applications for asylum were filed and approximately 45,000 applications were pending decision at the end of the year.¹³² In 2001, 24,550 new asylum applications were lodged.¹³³ In the first quarter of 2002, 4,685 applications were filed.¹³⁴ When an asylum seeker requests asylum, the Aliens Office of the Ministry of the Interior first determines whether Belgium is responsible for reviewing the asylum application, and then rules on the admissibility of the claim within eight working days.¹³⁵ The General Commission for Refugees and Stateless Persons (GCRS) reviews appeals of negative admissibility decisions within five working days at the border, or 30 days in-country.¹³⁶ The country’s highest administrative court, the State Council, is the last recourse for the suspension or annulment of orders to leave the territory.¹³⁷ GCRS issues

decisions on the merits of admissible claims.¹³⁸ Applicants may contest negative decisions on the merits before the Permanent Commission for Appeals.¹³⁹

The Aliens Law authorizes the Aliens Office to detain asylum seekers who arrive at ports of entry without valid travel documents or identification while decisions on their admissibility are pending.¹⁴⁰ The Aliens Office may also detain in-country applicants who entered Belgium without proper documentation if it decides that their asylum applications are inadmissible.¹⁴¹ Detainees in such circumstances have 24 hours to appeal their admissibility decisions, while those not ordered detained have three days to appeal.¹⁴² In deciding whether to detain a given undocumented asylum seeker, the Aliens Office considers whether an appeal is likely to be rejected, whether the asylum seeker comes from a country from which few asylum applications are granted on the merits, and whether space is available in a detention center.¹⁴³ Asylum seekers may be detained for up to two months, but are rarely detained for so long.¹⁴⁴

In 1999, 4.1% of asylum seekers in border proceedings were detained while their claims for admissibility were determined.¹⁴⁵ However, all asylum seekers without valid visas arriving at Zaventem-Brussels airport are reportedly detained during the admissibility procedure.¹⁴⁶ In 2000, a total of 1,693 asylum seekers were detained in that airport's transit zone.¹⁴⁷ Belgian NGOs have criticized the treatment of asylum seekers in the airport's center.¹⁴⁸

Recognized refugees receive one-year renewable residence permits. Authorities can also issue residency permits to rejected asylum seekers on humanitarian grounds.¹⁴⁹ Belgian NGOs report that detained asylum seekers may be deported immediately upon denial of their substantive asylum claims without the chance to appeal.¹⁵⁰

Non-detained asylum seekers are assigned to accommodation centers funded by the government and run by either the Red Cross or the state or to smaller centers run by NGOs.¹⁵¹ There are no restrictions on leaving the centers daily. The centers provide food (in accordance with religious requirements if necessary), medical care, social and legal counseling, activities and classes, including school for children, and some transportation expenses.¹⁵²

Belgium has recently cut off financial assistance for asylum seekers whose applications or appeals are pending during the admissibility stage of the asylum procedure. Asylum seekers continue to receive welfare assistance, but such aid is in kind rather than monetary.¹⁵³ When accommodation centers are overcrowded, newly arrived asylum seekers may be referred directly to a social welfare center to obtain financial assistance for housing.¹⁵⁴

Is there independent review of the detention decision? No substantive review.

There is no review of detention during the first two months, except for the detention of asylum seekers awaiting deportation.¹⁵⁵

Asylum seekers may appeal only the legality of their detention, not the merits of decisions to detain, and must initiate their own appeals.¹⁵⁶ Asylum seekers may appeal decisions by the Aliens Office extending detention by two months to the Council Chamber of the District Court, which rarely modifies initial administrative decisions to detain.¹⁵⁷ If decisions are not made within five days, asylum seekers must be released.¹⁵⁸ The Council Chamber's decisions can be appealed by asylum seekers or by the public prosecutor within twenty-four hours to the Indictment Division of the Court of Appeal.¹⁵⁹ If the Indictment Division fails to rule in fifteen days, asylum seekers must be released.¹⁶⁰ Final appeals can be made to the *Cour de Cassation*.¹⁶¹ These appeals are very costly.¹⁶²

Are there limits on the period of detention? Yes. Generally two months. In addition, there is a limit of five months while awaiting deportation. Only for public order or national security reasons can detention be extended up to eight months.

If decisions on admissibility are not made within two months, asylum seekers are released from detention.¹⁶³ Asylum applicants who applied in-country and are detained because they lack entry documents must also be released if decisions are not made within two months.¹⁶⁴

The detention of asylum seekers awaiting deportation who have not filed appeals with suspensive effect may be extended by two month periods to a total of five months by the Minister of the Interior.¹⁶⁵ Such extensions are permitted as long as necessary steps for removal were taken within seven days of detention, removal is being diligently pursued, and the possibility of removal has been demonstrated.¹⁶⁶ Asylum seekers must be released if they have not been deported within five months.¹⁶⁷ If further detention is found to be necessary for reasons of public order or national security, it can be extended up to eight months.¹⁶⁸

Amnesty International reports that some asylum seekers have been held for up to eight months while awaiting deportation.¹⁶⁹ The Collectif de Résistance aux Centres Fermés et aux Expulsions reports that the five-month limit is frequently exceeded in practice, and on occasion detention can last for a year.¹⁷⁰ Coordination et Initiatives pour Réfugiés et Étrangers (CIRE) reports that, where attempts at removal are unsuccessful, the Aliens Office sometimes makes new decisions to detain, effectively beginning new periods of detention without taking into account the length of detention already endured.¹⁷¹

Is there periodic review of detention? No substantive review.

Decisions to prolong detention for two more months may be appealed to the Council Chamber each month at the request and at the considerable expense of asylum seekers.

As stated above, however, the Council Chamber and the appellate divisions may review only the legality of prolonged detentions, not the merits of decisions to detain.¹⁷²

Decisions to prolong detention for a fifth month must be referred by the Minister of the Interior to the Council Chamber for review of their legality within five working days; otherwise, the asylum seekers in question must be released.¹⁷³

Is there access to government-funded legal aid? Yes, but limited.

Free legal advice and representation is provided to asylum seekers throughout the asylum application process.¹⁷⁴ *Pro bono* attorneys are assigned by the Bar and paid by the federal state to represent asylum seekers.¹⁷⁵ These lawyers are often obliged to take on asylum cases as part of their mandatory legal training, and often do not have expertise or interest in asylum law. More experienced lawyers can also take on asylum cases and benefit from state funding.¹⁷⁶

The law states that lawyers must have access to detention centers every day between 8 a.m. and 10 p.m.¹⁷⁷ However, CIRE reports that, because closed detention centers are only accessible to individuals with private cars, *pro bono* attorneys often have difficulty gaining access to their clients. In 2000, over 50% of detained asylum seekers in the Vottem detention center never saw their attorneys.¹⁷⁸ What is more, a Belgian NGO reports that detainees are not permitted to contact human rights organizations and cannot receive phone calls.¹⁷⁹

Alternatives to detention: None.

Vulnerable groups: Unaccompanied minors without entry papers who apply for asylum at the border are detained while their asylum applications are processed on an accelerated basis.¹⁸⁰ Children whose parents are denied refugee status may also be detained while awaiting deportation.¹⁸¹

A program to provide guardians for unaccompanied minors exists, but the Danish Refugee Council has reported that it is not always successful in practice.¹⁸² As there are few beds and social programs for unaccompanied minors, UNHCR estimates that approximately 50% of children who apply for asylum in Belgium and are not detained during the process or pending deportation are lost to human trafficking and prostitution.¹⁸³

BULGARIA

Bulgaria is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Asylum seekers are governed by the Law for Refugees and exempt from the Aliens Act that governs all other immigrants.¹⁸⁴

1,755 applications for asylum were lodged in Bulgaria in 2000.¹⁸⁵ In 2001, 2,430 applications for asylum were lodged.¹⁸⁶ In the first quarter of 2002, 1,091 applications were filed.¹⁸⁷ The Bulgarian Agency for Refugees (BAR) is responsible for adjudicating asylum claims in the first instance.¹⁸⁸ Rejected asylum seekers may appeal negative decisions to the chairman of the BAR on administrative grounds, and to the Supreme Administrative Court on legal grounds.¹⁸⁹ Applicants have seven days to submit appeals of negative decisions made through the normal procedure, which suspends deportation proceedings.¹⁹⁰

The Law for Refugees also provides for an accelerated procedure for “manifestly unfounded” applicants, which refers to asylum seekers arriving from “safe” countries, or applicants who knowingly provide false information or documentation.¹⁹¹ In 2000, Bulgaria adopted a list of 105 “safe” countries.¹⁹² However, according to the UNHCR, the BAR uses the list only as a reference tool, examining each application on a case-by-case basis, and less than ten cases were denied as “manifestly unfounded” in 2001.¹⁹³ Applicants rejected in the accelerated procedure have only 24 hours to appeal negative decisions and may do so only through administrative, but not judicial, channels.¹⁹⁴ NGOs consider this time and procedure insufficient.¹⁹⁵

The government reported that, during 2000, 137 asylum seekers were detained, but the Bulgarian Helsinki Committee reported that 3,439 foreigners (not all asylum seekers) were detained, which suggests that the actual number of detained asylum seekers may have been higher than the government indicated.¹⁹⁶ The Ministry of the Interior is legally responsible for the decision whether to detain undocumented asylum seekers.¹⁹⁷ Although the Law for Refugees does not require the detention of asylum seekers, the Danish Refugee Council reports that border officers, particularly at Sofia airport, routinely detain them along with non-asylum-seeking undocumented immigrants, who are detained pursuant to the Aliens Act.¹⁹⁸ As a result, many asylum seekers are not afforded the opportunity to file asylum applications before they are deported.¹⁹⁹ Border Police are not trained in asylum law and are reported to frequently expel refugees without referring them to appropriate asylum authorities.²⁰⁰ Asylum seekers whose claims are rejected and who remain in the country beyond the date of their removal order are subject to detention.²⁰¹

Is there independent review of the detention decision? No.

The Aliens Act, which is often incorrectly applied to asylum seekers, does not provide for independent review of decisions to detain undocumented immigrants.²⁰²

Are there limits on the period of detention? No

There are no limits on detention at the airport transit zone for asylum seekers wrongly detained pursuant to the Aliens Act.²⁰³ Asylum seekers have reportedly been detained at

the border for long periods pending the outcome of their appeals of decisions made in the accelerated procedure established by the 1999 Refugee Law.²⁰⁴

Is there periodic review of detention? No.

The Aliens Act, under which asylum seekers are often wrongly detained, does not provide for periodic review of detention.

Is there access to government-funded legal aid? No.

Asylum seekers may have attorneys or other representatives present throughout the asylum process. However, asylum seekers detained at the borders have difficulty gaining access to the asylum procedure and obtaining legal assistance.²⁰⁵ The US Committee for Refugees reports that asylum seekers are often not informed of sources of available legal counsel.

Most legal aid is provided through UNHCR-funded organizations, such as the Bulgarian Helsinki Committee,²⁰⁶ which is the only NGO that provides free legal assistance to asylum seekers.²⁰⁷ These agencies gained access to the airport and the Drujba Detention Center in 1999-2001.²⁰⁸

Alternatives to detention: Semi-open centers or release.

Upon arrival, asylum seekers may be accommodated in one of Bulgaria's two reception centers.²⁰⁹ After registering with the authorities, some asylum seekers move into private accommodations depending upon their resources.²¹⁰ As demand for space in the reception centers exceeds supply, some asylum seekers must wait for spaces to open up before they are released from detention.²¹¹ Those staying in reception centers must get permission to leave the centers for periods longer than 24 hours.

Medical care is provided to asylum seekers in accordance with the Law for Refugees. A medical team is available at the reception centers.²¹²

Vulnerable groups: The Refugee Law provides that unaccompanied minors must be appointed legal guardians and that unaccompanied minors, single mothers and mothers with many children must receive social assistance. Women are also to be afforded protection from psychological and physical violence.²¹³

Medicine for vulnerable asylum seekers is available through arrangements with the Bulgarian Red Cross and CARITAS.²¹⁴

CANADA

Canada is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. During 2000, 37,739 asylum applications were filed in Canada and at the end of the year there were 30,177 applications pending decision.²¹⁵ In 2001, 44,452 asylum seekers applied for asylum in Canada.²¹⁶ In the first quarter of 2002, 6,784 applications were filed.²¹⁷ Only a small portion of asylum seekers are detained,²¹⁸ and alternatives to detention are widely used. Statistics from Citizenship and Immigration Canada (CIC) indicate that at any given time there is an average of 455 detainees across Canada under the Immigration Act, however there are not statistics which indicate how many of these detainees are asylum seekers.²¹⁹

Bill C-11, now the *Immigration and Refugee Protection Act (IRPA)*, received royal assent on November 1, 2001. Subsequently, the Regulations were published on June 14, 2002. In terms of detention, the new regulations codify factors to be considered in decision-making on detention many of which were either common practice or in administrative guidelines in the past. Members of the Immigration and Refugee Board (IRB) Immigration Division, who are responsible for reviewing decisions on detention, continue to have wide discretion on issues of detention because decisions are made on a case by case basis, and all circumstances must be considered.²²⁰ The new legislation broadens the circumstances upon which detention can occur, and the announced benefits of the new regime are to “provide enhanced protection of Canadian society,”²²¹ with no mention of the protection of rights of refugee claimants.

As stated in IRPA § 55(2), the three main grounds for detention are flight risk, danger to the public or if the officer is unsatisfied as to the identity of the claimant. While these grounds are the same as in the former legislative regime, the provisions that allow detention are broadened. In the past, persons could only be detained on the basis of identity at the port of entry. Now, persons can be detained at any point in the claim process for identity reasons. This includes those who present themselves to make an inland claim. The expansion of detention on the basis of identity is of particular concern because those seeking asylum are often forced to leave their countries without proper identification because it is their very identity which puts them at risk.²²² In addition to broader power under the law to detain asylum seekers, the use made of the power also seems to be expanding. In recent years, there has already been an increase in the use of detention for identification grounds, even prior to the change in the law. It remains to be seen how much the government will make routine use of the expanded powers.

Under § 55(3) a claimant may be detained upon entry into Canada where the officer “considers it necessary... in order for the examination to be completed.” This additional ground for detention has been critiqued by Canadian NGOs such as the Canadian Council

for Refugees, because it creates a situation in which detention occurs only for reasons of administrative efficiency.

Finally, the powers of Immigration officers to detain without a warrant have been broadened.

Under the new IRPA, there is mandatory detention under § 82(2), which states that “[a] foreign national who is named in a certificate described in subsection 77(1) shall be detained without the issue of a warrant.” § 77(1) provides that the Minister of Immigration and the Solicitor General of Canada “sign a certificate stating that a permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.” A Federal Court Trial judge has the power to decide if the certificate is reasonable, and based on this decision either upholds or quashes the certificate.

There are three detention centers in Canada: in Toronto, Vancouver and Montreal. In addition to detaining asylum seekers in designated detention centers, there are cases where they are held in jails.

Is there independent review of the detention decision? Yes.

During the first 48 hours of detention, an immigration officer may choose to release detainees “if the officer is of the opinion that the reasons for the detention no longer exist.”²²³

Review of all detention decisions is undertaken by the Immigration Division of the IRB²²⁴, an independent administrative tribunal established by the Parliament of Canada. The IRB mission is to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly, and in accordance with the law.

When a person is detained, a detention review is held to determine whether there are sufficient reasons to continue the detention of the person under the Act. Detention review hearings generally follow the tribunal processes, including the right to counsel, the right to be fully heard, and that Immigration Division members must provide reasons for their decisions.

Release from detention can occur once an officer of the Immigration Division is satisfied that the grounds for detention no longer exist. For example, if it is found that the detainee is not a danger to the public, that they are likely to appear for their examinations, etc, or if identify has been satisfactorily established.²²⁵ There are conditions for release, where the Immigration Division considers it necessary, “including the payment of a deposit or the posting of a guarantee for compliance with the conditions.”²²⁶

A detained person may request a review of detention at any time. The detained person or CIC may apply to the Federal Court of Canada for leave for judicial review of any decision on detention. Legal aid services may be available for these measures, depending on the provincial legal aid coverage.

Are there limits on the period of detention? No.

While there are no formal limits to detention periods, the IRB guidelines state that decisions to detain and extensions to detention periods must be “reasonable in accordance with principles of fundamental justice.”²²⁷ In *Sahin v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 214, the Federal Court, which has jurisdiction over immigration issues, upheld the principle that indefinite detention for a lengthy period of time can constitute a deprivation of liberty that is not in accordance with the principles of fundamental justice. This is upheld in *The Minister of Citizenship and Immigration (Applicant) vs. Cheong Sing Lai and Ming Na Tsang (Respondents)*, [2001] 3 F.C. 326.

Is there periodic review of detention? Yes.

There is a formal detention review process conducted by the Immigration Division of the IRB. The initial review must occur within 48 hours or “with out delay afterward.” Subsequent reviews must take place after 7 days and then after 30 days.²²⁸ This review scheme is less often than in the former legislation, where reviews occurred every 7 days for identity cases.

Each review is done *de novo*, and adequate reasons for continued detention must be given. Consequently, not only the grounds for detentions as per IRPA must be considered, but also other issues such as failure to execute removal, and if the length of detention is reasonable under the circumstances.²²⁹

Is there access to government-funded legal aid? Limited.

There is no right to free legal representation for detained asylum seekers under Canadian law.²³⁰ Each asylum seeker is apprised of the right to legal counsel and afforded an opportunity to obtain legal counsel. However, access to legal aid is limited, and the provision of free legal services is uneven since legal aid is administered provincially not federally.²³¹ For example in Quebec, the legal assistance available is reported to be so minimal that there is no effective access.

While detention facilities are open to government funded lawyers and NGOs, access can be difficult.²³² As mentioned above, some detainees, such as those who are not in city centers where detention facilities exist, are placed in jails. In addition to it being problematic that they are in placed alongside the criminal population, there are generally

no NGOs working in these locations with refugees. Consequently, lengthy detention periods result when there are no advocates or legal counselors available.²³³

Alternatives to detention: Release on bond, supervision by Toronto Bail Program.

The Canadian system emphasizes that detention of asylum seekers is a last resort. Under the IRPA § 58(3), when ordering the release of a detainee, the Immigration Division may impose “any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.” These arrangements are negotiated between the asylum seeker and the authorities of the Immigration Division, with any agreement subject to the approval of the Immigration Division member.²³⁴

Expanding on the above provision, IRB Guidelines on Detention state that:

Parliament has provided that adjudicators may order the release of a person detained pursuant to the *Immigration Act*, subject to such terms and conditions as they deem appropriate, including the payment of a security deposit or the posting of a performance bond. Given these provisions, together with the basic assumption that detention should be an exceptional measure in Canadian society, adjudicators should, in all cases, consider whether it would not be appropriate to impose certain conditions to reduce the risk of the person concerned failing to appear for an examination, an inquiry or removal from Canada, or to reduce the risk that such a person may pose to the public.²³⁵

The Toronto Bail Program has been established as a neutral third party organization that oversees released detainees to ensure that they meet the terms and conditions of their release. This initiative targets detainees in the Toronto area who cannot afford bail in cases where it is deemed that they do not need to remain in custody under certain terms and conditions, and where they can be followed by the community. In this program, Toronto Bail Program staff interview potential clients and conduct a detailed analysis of the detainee’s situation, including examination of factors such as ties to the community, employment and education status and medical problems. Based on this information, the program decides whether or not it will accept the client.²³⁶ Once accepted in the program, the person is placed under the supervision of the Toronto Bail Program. Failure to comply with any of the terms and conditions imposed by the IRB Immigration Division results in a Failure to Comply order being laid by the Toronto Bail Program supervisor.²³⁷ It is important to acknowledge that Canadian NGOs have critiqued this program, due to the fact that it creates an environment in which the Immigration Division can more easily select supervised, not unconditional, release.²³⁸

Vulnerable groups:

There are approximately 11 minors detained in Canada at any given time.²³⁹ The IRPA states that children should only be detained as a last resort and when determined to be in the best interest of the child. Regulations further outline special considerations for the detention of minors,²⁴⁰ including:

(a) the availability of alternative arrangements...; (b) the anticipated length of detention; (c) the risk of continued control by the human smugglers or traffickers who brought the children into Canada; (d) the type of detention facility envisaged and the conditions of detention; (e) the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent...; (f) the availability of services in the detention facility, including education, counseling and recreation.²⁴¹

These considerations have been criticized by Canadian NGOs who argue in spite of the overriding principle, detention of minors is still a possibility.

Other vulnerable groups including the elderly, persons with apparent or possible mental health problems or torture survivors, are not explicitly mentioned in the new Regulations.

CÔTE D'IVOIRE

Côte D'Ivoire is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. According to a U.S. State Department report dated March 2002, Côte D'Ivoire had not implemented legislation providing for asylum status in accordance with the convention, and their domestic immigration law did not designate a separate legal status for refugees.²⁴² However, the government does recognize the right to asylum, and it cooperates with the UNHCR with respect to refugee assistance.²⁴³

Detention of asylum seekers is uncommon in Côte D'Ivoire, according to UNHCR Abidjan.²⁴⁴ In 2000, there were 2,242 asylum seekers, one of whom was detained. In the first nine months of 2001 there were 2,359 asylum seekers, and none were detained. At the end of 2001 Côte D'Ivoire did have in detention 67 refugees, including six minors and one female.

Asylum seekers and refugees have access to legal assistance funded by UNHCR. Our research did not uncover information regarding the nature of the proceedings, time-limits on detention, and the review of decisions to detain. UNCHR reports that although it does not visit prisons or detention centers in a systematic manner, they do on occasion visit detained persons of concern to UNHCR.

Detainees are separated by gender and have access to cooking facilities, and cultural and religious practices are permitted. There is access to medical aid from ICRC and, on occasion, UNHCR.

CYPRUS

Cyprus is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Although the Cypriot Parliament approved a new Refugee Act in 2000, as of the end of 2001 the government had not yet established a process for making asylum determinations and such determinations continued to be made by UNHCR.²⁴⁵

Cyprus does not regard itself as an asylum country, and expects recognized refugees to seek resettlement in other countries if repatriation seems unlikely.²⁴⁶ However, about 1,600 persons sought asylum in Cyprus in 2001 and 1,300 refugees and asylum seekers remained in need of protection at year's end.²⁴⁷

Under the Refugee Act, asylum seekers may be detained only to: (a) ascertain identity; (b) ascertain the facts upon which an application is based; and/or (c) protect public security and order.²⁴⁸ An immigration officer or the Secretary of the Refugees Authority makes the initial decision to detain for a period of up to eight days.²⁴⁹ Thereafter, detention may be ordered by a court for subsequent periods of eight days, not to exceed 32 days.²⁵⁰

The government claims that no asylum seekers were detained in 2000 and 2001.²⁵¹ However, according to USCR, the government of Cyprus maintains a 130-bed detention facility for undocumented asylum seekers and migrants and also reportedly detained illegal foreigners in Cypriot jails in 2001.²⁵² In addition, the British army, which maintains a military base in eastern Cyprus, detained more than 100 asylum seekers and migrants during the year.²⁵³ Authorities in Turkish-controlled northern Cyprus arrested and detained at least 220 asylum seekers in 2001.²⁵⁴

The government does not maintain reception centers or other accommodations for asylum seekers who are not detained, but in certain cases provides accommodations to refugees in hotels.²⁵⁵ It grants asylum seekers work authorization and temporary residence permits while their cases are pending with UNHCR, and issues three-year residence and work permits to recognized refugees.²⁵⁶ The Refugee Act also provides for free medical care and primary and secondary education for refugees.²⁵⁷

Is there independent review of the detention decision? Yes.

The initial decision to detain can be appealed by a writ of habeas corpus or application for a court order to set aside the detention order.²⁵⁸ According to the Government,

appeals—which ascertain whether the law was applied correctly—may be filed by the asylum applicant before the appropriate court as soon as the asylum seeker is informed of the detention decision.²⁵⁹

Are there limits on the period of detention? Yes; thirty-two days.²⁶⁰

Is there periodic review of detention? Every eight days; automatic.²⁶¹

According to the Refugee Law, detention of an asylum seeker beyond the initial eight-day period can be extended for subsequent periods of eight days only by court order.²⁶² There is no time limit on detention following a final negative asylum application decision; unsuccessful asylum seekers will “be deported within a reasonable time.”²⁶³

Is there access to government-funded legal aid? No.

The Refugee Law of 2000 provides that asylum seekers have the right to legal counsel during detention and during interviews by immigration officers and the Refugees Authority.²⁶⁴ There is no government funded legal aid; although the government states that the topic is currently under consideration.²⁶⁵

Alternatives to detention: None.

Vulnerable groups: No information available.

CZECH REPUBLIC

The Czech Republic is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. The current refugee law came into effect in 2000 and was amended during 2001 to align Czech laws more closely with European Union (EU) standards.²⁶⁶

In 2000, 8,787 people applied for asylum; at the end of the year, there were 4,625 applications awaiting resolution.²⁶⁷ 18,090 asylum applications were filed in 2001.²⁶⁸ In the first quarter of 2002, 2,729 applications were filed.²⁶⁹ Upon announcing their intention to apply for asylum to passport officials at the border, all asylum seekers, regardless of documentation, are issued tickets to a designated reception center in the interior.²⁷⁰ Asylum seekers must report promptly to the centers, where they may lodge their formal asylum applications.²⁷¹ The Ministry of Interior’s Department for Refugees is responsible for issuing first-instance decisions on asylum claims, and should reach a decision within 90 days of an applications receipt.²⁷² Two commissions decided appeals in 2001; but the 2001 amendment to the refugee law creates a new appeal body for second-instance applications, provisionally the High Court in Prague, pending a new law on the administrative judiciary system that enters into force in January 2003.²⁷³

The 2000 legislation created an accelerated procedure for “manifestly unfounded” applications—the grounds for which the 2001 legislation expanded—which allows unsuccessful applicants only seven days to appeal.²⁷⁴ The Department for Refugees may also refuse status to applicants who arrive in the Czech Republic from so-called “safe countries of origin” or “safe third countries” to which they can be returned.²⁷⁵

New arrivals must report to the reception center at Vyshni Lhoty, for a “quarantine period”—about 21 days— during which they undergo a medical exam, have their first asylum interview and are not allowed to leave the reception center.²⁷⁶ The reception center is run by the Department for Refugee Facilities Administration of the Ministry of the Interior and can hold 500 people.²⁷⁷ The center tries to accommodate families separately from other asylum seekers but this is not always possible. The applicants for asylum do not have the ability to cook but the center provides food. The Ministry provides elementary social assistance and NGOs also provide social assistance for adults and organize activities for children. Basic medical care is provided at the center.

Following the quarantine period, most asylum applicants are permitted to move to one of the country’s four refugee residential centers (or refugee camps), where they live for the duration of the asylum procedure.²⁷⁸ An asylum seekers whose identity cannot be proved, or who the Aliens and Border Police suspect will attempt to avoid expulsion their applications are rejected may be detained in the reception center beyond the initial quarantine period.²⁷⁹

Applicants may live outside the refugee centers if they can prove that they have accommodation. Asylum seekers in the refugee camps enjoy more freedom of movement than in the reception center and may leave the camp temporarily after obtaining an authorization. The Danish Refugee Council reports that the “conditions are satisfactory” in these camps. If possible, the camps will try to accommodate the families separately. Food is provided by the camps which attempt to take into account cultural and religious dietary requirements. The ability for applicants to cook is currently under discussion. NGOs also provide Czech language tuition in the camps. Basic medical care is provided at the center.

Asylum seekers may stay in the camps until the Minister of the Interior or the Commission renders its decision. Whether the decision is positive or negative, and whether or not they appeal the decision, they have to leave the camp once it is rendered.

In both the reception center and the refugee camps, the asylum seekers receive financial assistance (free board and lodging, pocket money), and both provide basic medical care. The asylum seekers accommodated outside the camps, however, automatically lose their entitlements to financial and medical assistance.²⁸⁰

Is there independent review of the detention decision? No information.

Are there limits on the period of detention? Yes; thirty days after the expulsion order.

Asylum seekers without residence permits may be detained pursuant to an expulsion order for a maximum of thirty days. If removal is not possible within thirty days, the applicant must be released, though she may risk re-arrest.²⁸¹

Is there periodic review of detention? No information.

Is there access to government-funded legal aid? No.

NGO and UNHCR access to the reception centers is limited.²⁸² NGOs provide free legal assistance to challenge the legality and circumstances of detention.²⁸³

Alternatives to detention: Yes.

As noted above, following the quarantine period, most asylum applicants are permitted to move to a refugee residential center or may live outside the refugee centers if they can prove that they have accommodation.

Vulnerable groups: All unaccompanied minors are accommodated in the same refugee camp.²⁸⁴

Upon the commencement of the asylum procedure and for its duration, the Aliens and Border Police appoint a guardian to represent unaccompanied minors under 18 years old. The procedure for unaccompanied minors is the same as the one for adults although their age and situation may discretionarily be taken into consideration. Financial assistance provided to unaccompanied minors is the same as that for other asylum seekers.

DENMARK

Denmark is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. The Danish asylum procedure is governed by the Aliens Act of 1983, as amended.²⁸⁵

Detention of asylum seekers is common, with an estimated 50% of all asylum seekers detained at some point.²⁸⁶ 12,200 people applied for asylum in 2000, and there were 495 asylum seekers detained in 2000.²⁸⁷ In 2001, there were 12,403 asylum application lodged in Denmark, and there were 666 asylum seekers detained.²⁸⁸ These statistics do not include asylum seekers detained in accordance with Section 36 of the Aliens Act who are released within three days of detention.²⁸⁹ In the first quarter of 2002, 1,933 applications were filed.²⁹⁰

Asylum seekers who cannot establish their identity and travel route are usually detained by border police under the authority of the Ministry of Justice.²⁹¹ Asylum seekers who refuse to stay in a reception center, are deemed violent, or fail to appear for an asylum interview may also be detained.²⁹²

After an individualized examination of the claim, asylum seekers whose application is subject to the “manifestly unfounded” procedure may be detained for seven days to ensure their presence during this process.²⁹³

Asylum seekers may also be detained if custody is found necessary on definite grounds to ensure their presence during their case and possible appeal, if (a) the asylum seeker is not a permanent resident and is suspected of having committed an offense that may lead to deportation or (b) the asylum seeker entered Denmark in violation of an entry prohibition.²⁹⁴

Rejected asylum seekers awaiting deportation may be detained if the police believe that less restrictive measures are not sufficient to ensure compliance with a removal order. Such less restrictive measures may include deposit of travel document, posting of bail, reporting to police and staying at a designated address until deportation.²⁹⁵ UNHCR reports that detention is chosen over less restrictive measures frequently.²⁹⁶

In June 2001 an amendment to the Aliens Act was passed by Parliament which expanded the grounds for detention of asylum seekers. Asylum seekers who applied for asylum in Denmark and were subsequently expelled may be detained throughout the asylum procedure.²⁹⁷ Further, police may detain asylum seekers where: the asylum seeker does not assist in procuring information for the case, fails to appear for a hearing or fails to respond to a police summons, has exhibited violent or threatening behavior to individuals working in or residing in an accommodation center, fails to stay at a place determined by the Danish Immigration Service, or does not cooperate with arrangements for deportation. Such detention may only be ordered after an evaluation of whether alternatives to detention, such as reporting to the police, may be sufficient to ensure the appearance of the asylum seeker.²⁹⁸

Asylum seekers who are not detained or are released from detention are referred to one of two reception centers, both within 50 km of Copenhagen. These centers are run by the Danish Red Cross and have a combined capacity of over 900 beds. The reception centers are open and serve as a primary site for registration with the police and preliminary interviews with the Danish Immigration Service.

After six weeks, asylum seekers are normally assigned to accommodation centers, unless they make a special application to live with family or friends. Refugee financial assistance and social services are tied to residing within the accommodation centers, which are also run by the Danish Red Cross. There are kitchens, families are typically

housed separately, and residents are provided with pocket money. Asylum seekers may leave the center for up to six weeks per year, provided there is an address or a telephone number where they can be reached. The Danish Red Cross also runs a center for victims of torture or trauma, which is staffed by trained specialists including medical doctors and nurses.²⁹⁹

Is there independent review of the detention decision? Yes.

After three days of detention, asylum seekers are entitled to mandatory review of detention by the lower City Court.³⁰⁰ This review examines the lawfulness of the detention and its continuance.³⁰¹ Detention may be extended by judicial decision for up to four weeks. Further detention requires review by the lower City Court.³⁰² The decision of the lower City Court can be appealed to the High Court.³⁰³

The general law on administration of justice applies fully to the detention of asylum seekers.³⁰⁴

Are there limits on the period of detention? No.

Asylum seekers detained while being processed under fast track procedures (for “manifestly unfounded” claims) may be detained for no longer than seven days.³⁰⁵

Other asylum seekers are not subject to a maximum length of detention, although continued detention of asylum seekers awaiting deportation is subject to the requirement that deportation can be carried out in the near future.³⁰⁶ However, UNHCR reports that it is not unusual for those awaiting deportation or establishment of identity to face detentions exceeding a year.³⁰⁷

Is there periodic review of detention? Monthly; automatic.

The initial decision to detain is reviewed by the lower City Court after a maximum 3 days, and such detention may be extended for up to a maximum of four weeks. Any further periods of detention, each not to exceed four weeks, must be ordered by the lower City Court.³⁰⁸

Is there access to government-funded legal aid? Yes.

At court hearings on detention, the asylum seeker is provided with state-funded, appointed counsel.³⁰⁹ While asylum seekers are entitled to such counsel as soon as they are detained, the court appoints lawyers just before the hearing. Consequently, lawyers assigned by the court have insufficient time to interview their client and prepare the asylum claim, and are often unfamiliar with immigration law.³¹⁰

The independent Danish Refugee Council (“DRC”) offers immigration counseling during all stages of the asylum process, both in detention centers as well as at their offices.³¹¹ The police must inform detained asylum seekers of their right to contact the DRC. Lawyers from the DRC are generally able to visit the detainee within three days, and police are not present during the interview. The DRC provides interpreters and advice, as well as follow-up work with the Immigration Service and police.³¹²

Alternatives to detention: Alternative measures to detention include the payment of a bond, surrender of passport, staying at a designated address or regular reports to the police.³¹³ In addition, as detailed above, asylum seekers who are not detained or are released from detention are referred to one of two open reception centers run by the Danish Red Cross.

Vulnerable groups: Detention of asylum seekers with small children and of minor asylum seekers is only ordered on an exceptional basis. Such cases are processed as swiftly as possible. Detention of seriously ill asylum seekers is avoided to the greatest extent possible.³¹⁴

Unaccompanied minors, up to age 18, are accommodated in special reception centers run by the Red Cross. Children who are not considered mature enough -- generally those under the age of 15 -- are not required to submit an application for asylum and may be granted a residence permit under exceptional circumstances. This evaluation is made by the Immigration Service. Unaccompanied minors are provided with a Red Cross guardian but are not afforded free legal advice.³¹⁵

EGYPT

Egypt is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, but not to the International Covenant on Civil and Political Rights or its First or Second Optional Protocols. Egypt has no domestic asylum laws and UNHCR determines the refugee status of individual asylum seekers.³¹⁶

Egypt hosted more than 55,000 refugees and asylum seekers at the end of 2000³¹⁷, and approximately 75,000 at the end of 2001.³¹⁸ Asylum seekers who enter without a visa are detained by immigration police and local police or security.³¹⁹ Asylum seekers without residency permits are also detained, but less frequently.³²⁰

Is there independent review of the detention decision? No.

If the UNHCR becomes aware that an asylum seeker is detained for entry without documentation, she will be interviewed in prison by a UNHCR officer.³²¹ If her asylum application is approved, she will be released into UNHCR custody.³²² If she is rejected, there is no appeal, and the asylum seeker faces deportation or detention as long as she is unable to pay for her return to her home country.³²³

Are there limits on the period of detention? No.

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

Alternatives to detention: None.

Vulnerable groups: In 2000, women and children were reportedly detained in prison for several months for demonstrating outside of UNHCR's office.³²⁴

FINLAND

Finland is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. The Aliens Act of 1991, as amended, and the Aliens Decree of 1994 govern the asylum process in Finland.³²⁵

3,170 people applied for asylum in 2000; at the end of the year, there were approximately 1,300 applications pending first instance decisions, and 250 awaiting decision on appeal.³²⁶ In 2001, 1,650 asylum applications were lodged.³²⁷ In the first quarter of 2002, 391 applications were filed.³²⁸ Approximately ten percent of asylum seekers are detained on arrival.³²⁹

Asylum seekers whose identity and travel route cannot be established are frequently detained in police custody for up to four days.³³⁰ Moreover, detention may be imposed if there is reasonable cause to believe that the asylum seeker will commit a crime or go into hiding.³³¹ If detention is extended by the local District Court beyond the initial four days, detainees are typically transferred to prison, despite the fact that the Aliens Act provides that detainees should be held in separate detention facilities.³³² Government policy states that asylum seekers should be detained only as an extreme security measure.³³³

The Ministry of the Interior and the Ministry of Labor have undertaken to establish a closed reception center for detained asylum seekers near Helsinki. These facilities are expected to open in 2002.³³⁴

Asylum seekers must typically register with the reception center closest to their point of entry.³³⁵ There are approximately 19 reception centers, many of them run by state and local governments with several run by the Finnish Red Cross. Asylum seekers may stay at the centers throughout the asylum adjudication process, including the duration of any appeals. Centers are open and asylum seekers may attend classes both inside and outside the center to help train for work and eventual integration into Finnish society.³³⁶ Free health care is provided to asylum seekers through the reception centers.³³⁷ Cooking

facilities are generally available in the reception centers.³³⁸ Asylum seekers may choose to stay outside the reception center, without consequence of losing financial assistance.³³⁹

Is there independent review of the detention decision? Yes.

The decision to detain an asylum seeker is made by a senior officer of the police or by a senior officer of the frontier guard (the latter only has the authority to detain for 48 hours).³⁴⁰ This decision is based on whether the asylum seeker's identity is clear, whether she has entered with a valid visa, and whether there is a risk of flight or criminal activity.³⁴¹ The officer who has made the detention decision must inform the local District Court of the detention at the latest, the day after detention. The Court must hear the case within four days of detention, and may then extend detention for up to fourteen days. This review may be substantive, but often lasts only fifteen to twenty minutes, which limits the thoroughness of the review. Detainees are rarely released by courts.³⁴² The police may release detained asylum seekers on their own initiative.³⁴³

Are there limits on the period of detention? No.

As long as detention is reviewed every fourteen days, there are no limits on length of detention.³⁴⁴ In practice, asylum seekers are typically detained for three to eight weeks.³⁴⁵

Is there a periodic review of detention? Yes; every fourteen days.

After the initial four days, the decision to continue detention is automatically reviewed by the court of first instance every fourteen days.³⁴⁶

Is there access to government-funded legal aid? Limited.

It is difficult for detained asylum seekers to access legal assistance. The Finnish Refugee Advice Centre (FRAC) has a contract with the Ministry of Labour to provide free legal advice to asylum applicants, but FRAC is rarely informed of detained asylum seekers.³⁴⁷

Most detained asylum seekers retain private counsel as they are eligible for legal aid for bail hearings. Police who handle asylum cases for detainees provide lists of lawyers to these asylum seekers, but not all of the lawyers are members of the Bar or fully qualified.³⁴⁸

Asylum seekers may be appointed a private solicitor free of charge for the appeals process, but UNHCR reports that detained asylum seekers may have difficulty gaining access to legal aid at the appeals level.³⁴⁹ This appointment is facilitated through the normal legal aid scheme, which is financed by the government. In practice, few legal aid attorneys have immigration experience and FRAC lawyers handle the majority of appeals.

Alternatives to detention: None.

Vulnerable groups: Unaccompanied minors are typically accommodated in special areas of reception centers. All unaccompanied minors are appointed a legal representative, who is present at all asylum interviews.³⁵⁰

FRANCE

France is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. The Asylum Act of 11 May 1998 transferred the legal provisions governing the right of asylum in France to the Act of 25 July 1952, which defines the status of the OFPRA (“Office français de protection des réfugiés et apatrides”), the first instance asylum determination body.³⁵¹

In 2000, 38,747 applications for asylum were filed, and by year’s end, there were an estimated 21,000 applications pending decision.³⁵² 47,290 asylum applications were lodged in 2001.³⁵³ In the first quarter of 2002, 12,629 applications were filed.³⁵⁴

Foreigners, including asylum seekers, denied entry into France at the border may be kept in so-called “waiting zones” or remand centers.³⁵⁵ Holding a person in a “waiting zone” for more than four days requires the approval of a judge and can only last up to 20 days.³⁵⁶ According to NGOs, the French border police reportedly often fail to provide insufficiently documented foreigners with asylum forms or information on their rights, interpretation facilities in the “waiting zones” are poor and asylum applicants have no access to their own files.³⁵⁷ At Charles de Gaulle Airport, asylum seekers are held in a nearby airport hotel in conditions that have been criticized by Amnesty International.³⁵⁸

Further, asylum seekers whose applications are filed in country and are subject to accelerated procedures may be detained. The accelerated procedure may be used where the asylum seeker’s presence is a threat to public order, the asylum application is considered to be fraudulent, the Dublin procedure applies or the asylum seeker is from a country that the French government has decided is “safe.”³⁵⁹

According to a 2000 report, there are 63 open reception centers in France, with a total capacity of 3,779 beds, that provide shelter to asylum seekers and young workers.³⁶⁰ Reception centers are commonly at full capacity with a six-month wait list for asylum seekers. If an asylum seeker is granted a place in a reception center, she is also eligible for substantial financial assistance, which is, to a lesser extent, available to asylum seekers who live outside the accommodation centers. Asylum seekers who are not granted a place in a reception center may be housed in homeless shelters, which the UNHCR has declared unsuitable as a source of accommodation.³⁶¹

Is there independent review of the detention decision? Yes.

The border police have the authority to detain asylum seekers in administrative detention for 4 days. Further detention must be ordered by the Tribunal de Grande Instance, a civil court, which may extend detention in eight day increments for a total of 20 days. The decisions of the Tribunal to extend detention can be appealed to the Court of Appeal.³⁶²

Are there limits on the period of detention? Yes; 12-20 days.

An individual who applies for asylum at a border may be detained for a maximum of twenty days in order to determine whether or not the application is manifestly unfounded.³⁶³ After twenty days, she should either be granted entry or, if the application is deemed ‘manifestly unfounded’, returned to either a third country or the country of origin.³⁶⁴

An asylum seeker may also be detained, for a maximum of twelve days, if another Dublin Convention state is responsible for examining her application, if she is deemed a threat to public order, if she comes from certain “safe countries” or if her application is considered abusive or fraudulent.³⁶⁵

Asylum seekers whose claims have been denied may be detained for a total of twelve days (one two-day period and two five-day periods) for removal. If removal is not accomplished, the asylum seeker must be released without any residency permits.³⁶⁶ Amnesty International has reported, however, that in at least one case, a refugee has been held in administrative detention (“*assignation à résidence*”) since 1993.³⁶⁷

Is there periodic review of detention? Yes; automatic.

After 4 days, the Civil Court will review the decision to detain. Extensions of detention periods thereafter are by judicial order only.³⁶⁸

Is there access to government-funded legal aid? Limited.

Asylum seekers who appeal the legality of their detention before the Civil Court are provided with a court-appointed lawyer.³⁶⁹

Cimade, a French NGO provides legal assistance to asylum seekers in fourteen detention centers (less than half of the centers in France). This legal aid is based on an agreement with the Ministry of Social Affairs, and Cimade reports to the government on a regular basis about their activities. Cimade visits the detention centers on a regular basis, assists with urgent cases and provides a telephonic advice line.³⁷⁰

The government decreed in March 2001 that it must set up an agreement with an NGO to be present at each detention center to protect the rights of detainees. However, the UNHCR does not have access to all of the detention facilities.³⁷¹

Alternatives to detention: None.

Vulnerable groups: Unaccompanied minors who do not have family to stay with in France are placed under the guardianship of the French authorities, and typically housed in a special reception center for children. UNHCR reports that NGOs find the arrangements made for unaccompanied minors to be insufficient.

Female asylum seekers are assigned female interpreters at interviews before OFRA when circumstances warrant it, but it is not common for female interpreters to be provided before the Commission des Recours. Female asylum seekers may request that their hearing be conducted in private, but the right to make this request may not be widely known.³⁷²

GERMANY

Germany is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. In 2000, some 78,600 applications for asylum were filed; at the end of the year, there were 43,791 applications pending first instance decisions.³⁷³ In 2001, some 88,287 asylum applicants were lodged and at the end of 2001 there were 56,111 asylum seekers awaiting first instance decisions on their applications.³⁷⁴ Figures available for the first quarter of 2002 show a reduction in applications, with some 19,230 applications filed.³⁷⁵ No information was available on the numbers of asylum applicants detained.

Those whose applications are being processed are typically housed in open reception centers.³⁷⁶ Detention is used mainly for asylum seekers whose applications have been rejected. Germany also may detain individuals who have resided in the country without authorization.³⁷⁷

Asylum seekers arriving at an airport without identity documents or from a “safe country of origin” are referred to an accelerated asylum procedure and kept at the airport “transit zone,” a closed airport reception center. If no decision has been made on the asylum application after two days, these asylum seekers are released and assigned to a reception center.³⁷⁸ The conditions in the transit zone at the Frankfurt airport were strongly criticized by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Amnesty International. Amnesty International expressed concern that prolonged periods of detention in the transit zone might adversely affect the physical and psychological health of detainees.³⁷⁹

In response to the September 11 terrorist attacks in the United States—and subsequent reports that terrorist cells had operated in Germany prior to the attacks—the German government passed new anti-terror legislation in late 2001.³⁸⁰ The legislation amends

many laws, including the Aliens Act and other regulations pertaining to foreigners. The new provisions will allow the government to check on incoming foreigners, including asylum seekers, more stringently, by collecting biometric data and by sharing more freely immigrants' personal information with law-enforcement agencies.³⁸¹ The amendments will also allow closer monitoring of immigrants during their residence in Germany, easier deportation of foreigners considered extremist, and exclusion from the asylum procedure of persons who have committed certain crimes.³⁸²

A new immigration bill (the Immigration Act) was signed in June 2002, to enter into force in January 2003. The bill passed very narrowly in Parliament, and a constitutional challenge to its validity has been lodged. The bill contemplates speeding up the asylum process and proposes to require asylum seekers whose applications are deemed 'manifestly unfounded' but whose deportations have been suspended to live in new camps until they leave the country voluntarily.³⁸³

Because Germany considers all of its neighbors to be safe third countries, border police who apprehend asylum seekers at or near a border are not required to refer the asylum seeker to the Federal Asylum Office and may instead refuse entry and force immediate return.³⁸⁴

Upon filing their application for asylum, all other asylum seekers are sent to open reception centers throughout the country for up to three months.³⁸⁵ After three months, they are typically sent to an accommodation center, until their claim has been finally adjudicated.³⁸⁶ While reception centers vary according to region, all provide meals and some accommodation centers provide cooking facilities. All provide federally-mandated allowances.³⁸⁷ Families are not typically, but may be, separated. The reception and accommodation centers are open, but an asylum seeker's movement is restricted to within the bounds of the center's district.³⁸⁸

Asylum seekers whose claims have been denied and who have stayed beyond the date of voluntary departure, failed to appear for removal, or are deemed likely to fail to appear for removal may also be detained.³⁸⁹ The authorities must apply for an order of detention from the competent judicial authority.³⁹⁰

*Is there independent review of the detention decision? Yes.*³⁹¹

Detention lasting more than 24 hours can be ordered only by the courts, not the aliens authority.³⁹²

According to German constitutional law (Art. 19, Abs. 4) every act carried out by a public authority is subject to judicial review upon petition to the courts. Judicial review of detention is provided for in the *Freiheitsentziehungsgesetz*, the law dealing with persons in some form of custody, such as psychiatric clinics or detention pending trial.³⁹³

The decision to detain is made by the civil section of an *Amtsgericht* (the lower district or local court). Appeal of this decision can be made within 2 weeks to the *Landgericht* (the district civil court) and then to the *Oberlandesgericht* (the regional civil court).³⁹⁴

Review upon appeal is a substantive review of the merits of the case and new evidence may be presented.³⁹⁵

Detention of aliens in the accelerated procedure must also be ordered by the court.³⁹⁶

For rejected asylum seekers detained while awaiting deportation, the request to detain or extend detention is made by the alien authority and is reviewed, and usually confirmed, by local courts. Appeals may be made within two weeks, but as initial-level appeals are often not heard for several weeks, the period of detention may have expired before a decision is taken.³⁹⁷

Are there limits on the period of detention? Yes.

Applicants in the accelerated procedure who are detained in the transit zone are interviewed quickly and if no decision is made within two days of the interview, are released.³⁹⁸ If the asylum seeker appeals a decision to deny entry within three days and no decision is made within fourteen days, the asylum applicant is automatically released.³⁹⁹ Despite this 19-day limit, the U.S. Committee for Refugees has reported that some asylum seekers have been kept in transit zone detention for months.⁴⁰⁰

Those who have been arrested for illegal entry prior to applying for asylum may be detained for a maximum of four weeks. Amnesty International reported in 2000 that such cases of detention were very rare.⁴⁰¹

For rejected asylum seekers awaiting deportation, detention may be ordered. If a deportation order has not yet been adopted and no immediate decision on deportation can be made, detention of up to six weeks may be ordered. Once the deportation order has been adopted, asylum seekers can be detained for one week if the asylum seeker is likely to abscond to avoid deportation. If the asylum seeker has failed to depart and changed his place of residence without informing the authorities, or if it is likely that the asylum seeker will fail to appear, then the competent judicial authority can order detention for six to eighteen months, after which time the alien must be released from detention.⁴⁰²

In practice, detention rarely lasts longer than 3 months.⁴⁰³

Is there periodic review of detention? Not for asylum seekers who are awaiting resolution of their asylum claims. But for those liable to be deported, three-month review.

Rejected asylum seekers awaiting deportation have the right to review of their detention every three months.⁴⁰⁴ In order to continue to detain an alien with a removal order, the alien authority must establish that removal is possible within the next three months.⁴⁰⁵

Is there access to government-funded legal aid? Very limited.

Financial aid for detainees is governed by the Civil Procedure Act, as is all legal aid provided in Germany.⁴⁰⁶ State-funded legal aid is granted only to destitute appellants whose cases are considered by the judge to have a chance of success.

In practice, in very few cases is a legal aid attorney appointed.⁴⁰⁷ An asylum seeker in the accelerated process whose application for asylum has been rejected as manifestly unfounded is provided with a government-funded local lawyer to discuss the possibility of an appeal.⁴⁰⁸

In most cases, legal aid is granted only if the lawyer is locally based, which can prove difficult for applicants detained in a part of country distant from where their lawyer is located. Moreover, the compensation offered to lawyers is not substantial.⁴⁰⁹

In addition, funding for representation in a small number of cases is provided for by NGOs, church groups, UNHCR and others.⁴¹⁰

Vulnerable groups: In certain regions, unaccompanied minors are detained in juvenile detention facilities prior to removal.⁴¹¹ Unaccompanied minors under 16 are appointed a legal representative.⁴¹²

GREECE

Greece is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. Asylum seekers filed 3,083 applications for asylum during 2000; at the end of the year, 392 applicants were awaiting decision.⁴¹³ At the end of 2001, Greece hosted about 6,224 persons with pending asylum applications. About 5,500 persons applied for asylum in Greece in 2001, a 78 percent increase from the 3,083 who applied in 2000.⁴¹⁴ In the first quarter of 2002, 1,532 individuals applied for asylum.⁴¹⁵ No information was available on the number of asylum seekers detained.

A new Alien Law was passed in 2001, and entered into effect in June, 2001. While asylum seekers are technically exempt from the new law, NGOs reported that in practice authorities often deny undocumented asylum seekers the opportunity to apply for asylum as a result of failing to distinguish between undocumented asylum seekers and other illegal migrants.⁴¹⁶ As detailed below, the new law provides for court review of

detention, and limits on the period of detention from 15 days to 3 months. These and other provisions were the result of intense advocacy by human rights groups.

Asylum seekers who apply at the border are held pending the outcome of the accelerated procedure, which may take from one to fifteen days, depending on whether an appeal is filed. In airports, detention facilities are surveillance areas monitored by the police, with meals and a wash room; men and women are usually separated.⁴¹⁷

Authorities may detain those who have been arrested for illegal entry before applying for asylum and rejected asylum seekers awaiting deportation.⁴¹⁸

Asylum seekers not subject to detention must reside at a location chosen by them or assigned by the authorities for the duration of the processing of their claim. Failure to report any change of address to the police may result in the interruption of consideration of the application. Human Rights Watch has documented extremely substandard conditions of detention for undocumented migrants in police detention facilities in Athens.⁴¹⁹ The Greek national ombudsman has publicly criticized these substandard conditions.⁴²⁰ The European Court of Human Rights in 2001 held that the conditions in two detention centers in Athens were inhumane and degrading.⁴²¹

In the immediate aftermath of the September 11 attacks in the United States, certain migrant groups arriving by boat to Greece were given fifteen-day expulsion notices, without the right of appeal or the ability to apply for asylum.⁴²²

Amnesty International reports that in the first half of 2001, deportable asylum seekers and asylum seekers awaiting decisions on their applications were detained without judicial review. In June 2001, the new Alien Law came into effect, providing for the right to seek judicial review of detention, and limiting the period of detention to 3 months.⁴²³

The European Council on Refugees and Exiles has reported that in the second half of 2001, the government created new reception centers and introduced a program of integration for homeless and other vulnerable asylum seekers.⁴²⁴ Preference in the reception centers is given to members of vulnerable groups, such as unaccompanied minors, the elderly, families with many children and single parents.⁴²⁵ Asylum seekers residing in the reception center must be granted permission to leave the center.⁴²⁶ NGOs give limited assistance in arranging other accommodations.⁴²⁷ Asylum seekers are entitled to free medical care, and members of vulnerable groups are entitled to financial assistance.⁴²⁸ The provision of language interpretation services for arriving asylum seekers has been criticized as highly inadequate.⁴²⁹

Is there an independent review of detention decision? Yes.

Administrative acts, including detention, are subject to judicial review to determine lawfulness.⁴³⁰

The new Alien Law, which went into effect in 2001, provides that the decision to detain may be challenged in Administrative Court. Since the new law came into effect, the court has typically upheld the police recommendation to detain, overruling that initial decision in only a few cases. The appeal is not automatic but must be raised by the detainee. The judge is obliged to decide the matter within a short time-frame.⁴³¹

Are there limits on period of detention? Yes; 15-day limit for accelerated procedure cases; 3 months in other cases.

Prior to the new Alien Law, asylum applicants arrested for an illegal stay could be detained during the entire period that their application is pending. According to the Danish Refugee Council, the constitutionality of this provision has been challenged.⁴³²

Applicants at border entry points are referred to an accelerated procedure and may be held in the transit zone for a maximum of fifteen days. While general limits are provided for in the Greek Constitution on “lawful conditions for arrest and detention,” prior to the new law there was no specific provision on length of detention for detained asylum seekers.⁴³³ Detainees who cannot be removed to their home countries could remain in detention indefinitely.⁴³⁴ However, pursuant to the new Alien Law, there is currently a 3 month limit on detention.⁴³⁵

Amnesty International reported in early 2002, though, that scores continued to be held illegally after the effectiveness of the new Alien Law.⁴³⁶

Is there periodic review of detention? No.

Asylum detainees are entitled to oppose detention in Administrative Court, as described above.⁴³⁷ There is no further review of the decision to detain, although repeated requests for review can be made provided new elements are set forth in the request.⁴³⁸

Alien authorities make their own recommendations to the Ministry of Public Order for release of certain detainees.⁴³⁹

Is there access to government-funded legal aid? No.

There is no government-funded legal aid scheme for asylum seekers in Greece.⁴⁴⁰ The Athens Bar Association has established a legal aid network for indigent aliens. Several NGOs, including the Greek Refugee Council (GRC) and the Greek Red Cross, also provide legal assistance to asylum seekers.⁴⁴¹ It has been reported, however, that in some instances police have denied access to lawyers.⁴⁴²

Vulnerable groups: The detention of unaccompanied minors is very rare.⁴⁴³ Unaccompanied minors’ cases are referred to the Minors’ Prosecutor, who decides whether appointment of a guardian is warranted. In practice, applications by

unaccompanied minors are given priority examination. There are limited benefits available to unaccompanied minors, including financial assistance and help with accommodations, either at the government-run reception center or alternative locations, such as youth hostels.⁴⁴⁴

GUATEMALA⁴⁴⁵

Guatemala is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. In 2000, 54 asylum applications were filed.⁴⁴⁶ Guatemala received 58 asylum applications (representing 72 individuals) during 2001.⁴⁴⁷ UNHCR, which adjudicates asylum claims in Guatemala, granted 21 individuals refugee status in 2001. Also in 2001, 32 asylum seekers were detained. An NGO report indicates that the U.S. pays \$8.50 per day per migrant towards the cost of detention in Guatemala of extra-regional migrants.⁴⁴⁸

There is reportedly no policy of automatic detention of asylum seekers, but detention is based on illegal entry into Guatemala. Following a new Law Regulating Migration in 1999, Guatemala established a network of detention centers.⁴⁴⁹ In addition to these small numbers of asylum seekers, it should be noted that there is a large population of migrants and refugees traveling through Guatemala to Mexico and the United States. Most of those detained are from regions other than Central America: including Sierra Leone, China, Sri Lanka, Pakistan, Sudan, India and Colombia.

Detention facilities have been documented as dirty, poorly ventilated, and overcrowded.⁴⁵⁰ UNHCR and NGO representatives were not permitted to conduct private interviews with detainees, and detainees were not allowed to receive visitors. Female detainees are not consistently separated from male detainees.⁴⁵¹

Is there independent review of the detention decision? No.⁴⁵²

The decision to detain is typically made in the first instance by the National Civil Police and then reviewed by the Director General for Migration if it is confirmed that the individual is in the country illegally. Factors considered in the decision to detain include whether the alien is traveling without documents or with fraudulent documents. Asylum seekers are detained pending processing of documentation and pending deportation.⁴⁵³ While an asylum petition is processed, and during refugee determination procedures, asylum seekers are kept in detention. This is the case both during initial applications and appeals.⁴⁵⁴

Are there limits on the period of detention? No.⁴⁵⁵

Detention usually lasts two months, during which time the application is processed. There have been instances where detention lasted for up to five months.

Is there periodic review of detention? No.⁴⁵⁶

Is there access to government-funded legal aid? No.⁴⁵⁷

However, depending on the circumstances of each case, NGO's may provide legal assistance.

Vulnerable groups: Men and women are sometimes separated in the detention centers.⁴⁵⁸

GUINEA

Guinea is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. According to the U.S. Committee for Refugee's latest World Refugee Survey 2002, there were approximately 390,000 refugees and asylum seekers in Guinea in 2001, with approximately 300,000 from Sierra Leone and 90,000 from Liberia⁴⁵⁹. 1, 129 people have applied for asylum in Guinea according to UNHCR since January 1, 2001 and since that time 1,187 asylum seekers have been recognized as refugees.⁴⁶⁰

Refugees and asylum seekers have been routinely subject to arbitrary arrest and detention. As detailed in a July 2001 report issued by Human Rights Watch, detention of asylum seekers and refugees has occurred primarily at the border areas and roadblocks, where Guinean authorities conduct security checks⁴⁶¹. However, larger groups of refugees have been detained *en masse* during periods when Guinea has been vulnerable to cross border attacks by rebel factions.

In September 2000, after a series of cross border attacks by rebels from Liberia and Sierra Leone, approximately 3,000 refugees were detained⁴⁶². Some were released days later, but arbitrary arrests of refugees continued throughout 2001. In March 2001, Guinean authorities questioned and detained approximately 450 refugees in the area of the Massakoundou refugee camp after rumored rebel attacks. They were later released under pressure from UNHCR.⁴⁶³

At borders and checkpoints in Guinea, refugees have been detained. The Guinean government has deployed military personnel to checkpoints and borders to screen refugees in order to prevent rebel infiltration. There has been generally no oversight of the screening practices during security checks. Guinean army, police, and civil defense force members can accuse and arrest refugees they believe to be rebels. Those accused of being rebels are detained and have been subject to abuse and torture. They can be held without being charged and without evidence against them.⁴⁶⁴ Individuals who are deemed suspicious are detained, usually for periods from a few minutes to a few days or longer. There are credible reports that refugees are sometimes held for months.⁴⁶⁵ There is no limit on their period of detention⁴⁶⁶ and there are no protections to secure for their

release.⁴⁶⁷ Some refugees pay bribes to Guinean security forces in order to secure their release from detention.⁴⁶⁸ According to a representative of a Guinean non-governmental organization, arrest and detention of asylum seekers are completely arbitrary. In no Guinean legislative text does it indicate to arrest asylum seekers.⁴⁶⁹

Is there independent review of the detention decision? No.

As noted above, there are no due process safeguards to prevent arbitrary detention. If the detainee has money, he or she may be freed quickly if he or she pays money to bribe the security forces.⁴⁷⁰

Are there limits on the period of detention? No.

Is there periodic review of detention?

From our research and inquiries, there does not appear to be any periodic review of detention.

Is there government-funded legal aid? No.

Vulnerable groups:

Women refugees in detention are particularly vulnerable, as they are often subject to rape and sexual violence by Guinean authorities.⁴⁷¹

HUNGARY

Hungary is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. During 2000, some 7,802 applications for asylum were filed, and at the end of the year, decisions were pending on 3,296 applications.⁴⁷² Some 9,554 asylum applications were lodged in 2001. Afghanistan alone produced 4,311 asylum seekers.⁴⁷³ At the end of 2001, there were 2,400 asylum seekers with pending cases,⁴⁷⁴ 174 persons were granted asylum, 52 of whom hailed from Afghanistan.⁴⁷⁵ In the first quarter of 2002, 1,675 asylum applications were made.⁴⁷⁶ No information was available on the number of asylum seekers detained.

All asylum seekers are interviewed upon arrival by the Border Police. If they are allowed to enter, asylum seekers are granted a 24-hour permit and directed either to an open Office of Immigration and Naturalization (OIN) reception center or to a closed detention center run by the National Border Guard.⁴⁷⁷ A number of these centers are closed and resemble military camps,⁴⁷⁸ and the U.S. Committee for Refugees has referred to them as detention facilities.⁴⁷⁹ Gaining permission to leave the centers is not always easy.⁴⁸⁰ UNHCR and NGOs have criticized conditions in the centers, including with respect to

separation of facilities by gender.⁴⁸¹ Indeed, the new detention centers were once open community shelters.⁴⁸² Following reports of poor conditions in refugee reception centers in Hungary during 2000, three reception centers began improvement projects during 2001.⁴⁸³ In addition, the opening of a new center was announced in October 2001, planned to house 500 European asylum seekers.⁴⁸⁴

Asylum seekers who arrive from a “safe third country” and are referred to the accelerated procedure before the OIN may be detained in the airport transit zone until a decision is reached on admissibility. Conditions in the transit zone have been criticized. In practice, most asylum seekers reportedly are admitted to the normal asylum determination procedure.⁴⁸⁵ Rejected asylum seekers who are not removed are detained if they commit a minor offense.⁴⁸⁶

The Hungarian Helsinki Committee reported in late 2002 that in many cases, authorities order refusal and detention where an asylum seeker has entered illegally, and secure continued detention until the asylum seeker is removed. They also report that there are a number of cases where requests to apply for asylum are not channeled to the proper authorities.⁴⁸⁷

Following September 11, Afghan asylum seekers from reception centers around the country were transferred to a single, closed center, ringed by armed guards. The government order by which the transfer was executed was rescinded after an outcry from UNHCR and the Hungarian Helsinki Committee.⁴⁸⁸

Is there independent review of the detention decision? Yes.

During the first five days of detention, a detained asylum seeker may request review from the local court. Such review focuses on whether the aliens policing authority correctly applied the law in ordering the detention.⁴⁸⁹

After five days, where the administrative body that ordered the detention requests extension, court review is automatic. In this review, however, the court does not focus on the legality of the detention but considers the case as an application for termination of detention. In such cases, the Hungarian Helsinki Committee reports that the court is not obliged to hear from the detainee.⁴⁹⁰

Asylum seekers may appeal local court decisions to extend detention to the county court within three days of the extension. The Hungarian Helsinki Committee reports that in practice, many asylum seekers are not effectively informed of their right to appeal, and even where an appeal is lodged, the county court will rarely grant it.⁴⁹¹

According to the Hungarian Helsinki Committee, sufficiency of the judicial review process generally has been questioned.⁴⁹²

Are there limits on the period of detention? Yes.

The new Aliens Act, which went into effect in January 2002, limits the length of detention permissible for migrants apprehended while entering or staying illegally in the country prior to applying for asylum, as well as detention of rejected asylum seekers who have not yet received expulsion orders, to 30 days. Rejected asylum seekers who have received expulsion orders may be detained for up to 12 months. The total period of detention, including pre- and post-expulsion order cannot exceed 12 months (previously the limit had been 18 months).⁴⁹³

Is there periodic review of detention? Yes. Monthly and 90 days after 6 months.

Detention to ensure implementation of a removal order must be reviewed monthly by the local court. After such detention has been extended for six months, the county court must conduct review every 90 days.

Is there access to government-funded legal aid? No.

There is no right to state-funded legal aid. Asylum seekers do have the right to an attorney, and local NGOs provide legal assistance at the detention centers as well as at the reception centers and dormitories.⁴⁹⁴ However, provision of legal counsel is inadequate as lawyers are unable to gain sufficient access to the detention centers and transit zone at the Budapest airport.⁴⁹⁵

Vulnerable groups: Unaccompanied minors under 18 may not be detained and are appointed a temporary guardian to assist with legal proceedings as well as a permanent guardian to represent the minor in matters pertaining to school, health, finance and the like. There are no specific legal requirements for treatment of other vulnerable groups, but in practice some special needs of members of such groups are met by NGOs.⁴⁹⁶

INDONESIA

Indonesia is not a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, or to the International Covenant on Civil and Political Rights or its First and Second Optional Protocols. At the end of 2000, Indonesia hosted more than 120,000 refugees and asylum seekers, including an estimated 120,000 East Timorese and 373 asylum seekers awaiting UNHCR status determinations.⁴⁹⁷ At the end of 2001, the number of hosted refugees and asylum seekers was approximately 81,000, including roughly 80,000 East Timorese and 806 asylum seekers awaiting UNHCR status determinations⁴⁹⁸. It is estimated that there were some 4,000 Australia-bound asylum seekers in Indonesia during 2001.⁴⁹⁹ In the first six months of 2002, 774 people sought asylum.⁵⁰⁰ In August 2002, it was reported that no asylum seekers were then detained in immigration detention centers (“kalantinas”) and that the number of asylum seekers so

detained previously had never been more than 10% of the entire asylum seeker population.⁵⁰¹

Indonesia has no mechanism for granting asylum.⁵⁰² While the 1999 Foreign Relations Act provides for the granting of asylum in accordance with national legislation, as of July 2002, no such relevant legislation exists. According to a 2002 report, the Indonesian government allows asylum seekers to stay in the country during UNHCR's consideration of their asylum claims and typically detains asylum seekers only during the status determination procedure, if at all.⁵⁰³ Asylum seekers who arrive without valid travel documents may be detained by the Immigration Authority in 'immigration quarantine' provided for under the Immigration Act of 1992 (the "Act").⁵⁰⁴

Since 2000, as a result of efforts by the Australian government, asylum seekers and unauthorized migrants generally have been dealt with under the "Regional Cooperation Arrangement", a system involving the Indonesian authorities, including police and immigration officials at regional and central levels, the corresponding Australian authorities, UNHCR and the International Organization for Migration ("IOM").⁵⁰⁵ Australia's interest in fashioning such arrangements stems from the fact that Indonesia has been a major transit country for those seeking refuge in Australia.

Under the regional arrangements, many aspects of which are funded by Australia, unauthorized migrants who come to the attention of Indonesian authorities may be detained while IOM is notified. Criteria for detention include whether there is a karantina available where the migrant is discovered, and, if a family is involved, whether conditions in an available karantina would be suitable for women and children. In practice, detention is reported to be rare, and detained asylum seekers are typically able to come and go during the day from the karantinas.⁵⁰⁶ The U.S. Committee for Refugees notes in a 2002 report that, because of the limited number of detention spaces, unauthorized migrants often are housed in hotels or like accommodation and are "quite free".⁵⁰⁷ IOM staff travel to the migrants' locations to undertake an initial assessment, and offer them the chance to contact UNHCR. IOM then notifies UNHCR's Jakarta office of any migrants wishing to have status determination interviews.⁵⁰⁸ On occasion, IOM will relocate an asylum seekers to Jakarta, but typically, asylum seekers remain in their initial placement prior to the UNHCR interview.⁵⁰⁹

Asylum seekers often wait weeks, or even months, for UNHCR staff to travel from Jakarta to conduct refugee status determinations, in part because of the small UNHCR staff and in part because of difficulty in finding interpreters for certain languages.⁵¹⁰ Asylum seekers recognized as refugees are typically relocated to Jakarta, where they are transferred from IOM's to UNHCR's care until a 'durable solution' can be found. Such a solution is invariably resettlement in a third country.⁵¹¹ Those who have been detained awaiting status determination by UNHCR are released upon UNHCR's request if accorded refugee status.⁵¹²

Though asylum seekers who have been denied refugee status by UNHCR are subject to deportation under Indonesian law, sources in 2002 state that there are no known cases of unauthorized migrants being deported by the government.⁵¹³ In practice, rejected asylum seekers who have exhausted appeals are neither detained for deportation.⁵¹⁴ Critics have noted that return to country of origin for those found not to be refugees might constitute denial of the right to seek asylum.⁵¹⁵

In addition, asylum seekers are subject to other provisions of the Act, which provide for detention and prosecution of aliens who enter Indonesia illegally or overstay their visas. It is reported, however, that such detention or prosecution is rarely, if ever, used.⁵¹⁶

Is there independent review of the detention decision? No.

Detained asylum seekers are kept without review until the immigration officials notify UNHCR of their presence and UNHCR makes its status determination.⁵¹⁷ As noted above, those who have been detained awaiting status determination by UNHCR are released upon UNHCR's request if accorded refugee status.⁵¹⁸

Are there limits on the period of detention? No.

It may take weeks or months for UNHCR to issue a refugee status determination.⁵¹⁹

Is there periodic review of detention? No.⁵²⁰

Is there access to government-funded legal aid? No.

There is no national legislation concerning asylum seekers and detained asylum seekers have no access to government-funded legal aid.⁵²¹

Vulnerable groups: Children and the elderly are detained without distinction, though IOM's requests that particular vulnerable asylum seekers be moved out of detention have routinely been granted.⁵²²

IRAN

Iran is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. Iran is a party to the 1951 Convention on the Status of Refugees. In 2001, Iran hosted about 2.55 million refugees – the largest number of refugees in any country of the world.⁵²³ Over 2 million of these refugees are from Afghanistan. The remaining refugees in Iran come from Iraq. While it appears that Iran does have some process for giving refugees status, the status is “precarious” and “ambiguous,” according to the U. S. Committee on Refugees.⁵²⁴

There has been a repatriation program for Afghan refugees in Iran. The program is carried out in collaboration with the UNHCR. While some sources show that Afghans are repatriating voluntarily, there is a question as to the extent of autonomy Afghans have in coming to such a decision. It has been reported that Iran Revolutionary Guards have swept Afghan-populated areas in Iran, arresting Afghans and confining them in Camps. This practice has mostly affected single men, but families have also been detained.

During 2002, the Iranian government announced that all recognized refugees would be forced to live in camps,⁵²⁵ although now only a small minority of refugees live in camps and are generally dispersed through out society.

The issues of detention are not paramount in the context of Iran where millions of Afghans and Iraqis enter the country as prima facie refugees, without any refugee determination process. In the exceptional cases of asylum claims from other countries, the UNHCR usually determines refugee status.

Nonetheless, detention does occur, generally with the goal of deportation.⁵²⁶ It is unclear how many detention centers exist, but the UNHCR Global Appeal 2002 mentions two detention centers, one in the province of Khorassan and one in Sistan-Baluchistan.⁵²⁷

Is there independent review of detention decisions? No.

Are there limits on the period of detention? No.

Although there are no limits, detained Afghans are generally deported within days or weeks of the detention.

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

Vulnerable groups: There is no special treatment for children or other vulnerable groups.

IRELAND

Ireland is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. At year's end 2000, Ireland received 10,938 asylum applications.⁵²⁸ In 2001, Ireland received 10,325 asylum applications. More than 600 unaccompanied child asylum seekers arrived in Ireland in 2001.⁵²⁹ In the first quarter of 2002, 2,533 applications were filed.⁵³⁰

The Refugee Act 1996 (as amended)⁵³¹ was fully implemented in November 2000. The Act provides for substantial changes to the asylum procedure, in particular detention practices. Prior to the Act, the UNHCR knew of no detained asylum seekers.⁵³² Under the amended Refugee Act, an asylum seeker may be detained by an immigration officer or a member of the Garda Síochána (police) if there is “reasonable suspicion” that she: (a) poses a threat to national security or public order; (b) has committed a serious non-political crime abroad; (c) has not made reasonable efforts to establish her true identity; (d) wants to leave and enter another state illegally; (e) is attempting to avoid a Dublin Convention transfer; or (f) has destroyed travel documents or is in possession of forged documents without reasonable cause.⁵³³ As such, the provisions confer upon the Garda and immigration officers unlimited powers to detain, though they must have reasonable cause to do so.⁵³⁴ However, in actual practice, the use of these detention provisions is exceedingly rare.⁵³⁵ Amnesty International (Irish Section) reports that as of April 2001, there have been very few reports of detained asylum seekers.⁵³⁶

In addition, Section 5(1) of the Immigration Act, 1999 provides that an immigration officer or member of the Garda may arrest and detain an asylum seeker whom she suspects is in violation of any provision of a deportation order.⁵³⁷ All other asylum seekers are referred by the immigration officers or police to the Refugee Application Center, issued a card upon completion of a lengthy questionnaire and directed to long-term accommodation centers.⁵³⁸

Asylum seekers are housed in reception centers for two weeks, then dispersed throughout the country to former hotels, hostels and custom-built accommodation centers. They receive an allowance of €19.10 a week in addition to full board from the State.⁵³⁹ The Reception and Integration Agency (“RIA”), established under the aegis of the Department of Justice, Equality and Law Reform is responsible for organizing the dispersal and direct provision program and may require asylum seekers to reside in particular districts.⁵⁴⁰ In practice, since financial assistance must be collected weekly in the district of an asylum seeker’s residence, movement around the country is to some degree restricted.⁵⁴¹

Each of the 86 accommodation centers housing asylum seekers is obliged under contract to offer menus which reflect the reasonable ethnic and religious needs of asylum seekers. Menus are cycled on a seven day basis to ensure variety; in state-owned properties and larger accommodation centers, 28 menu cycles are in place. The RIA also requires the chef of each accommodation center to meet on a regular basis with a representative group of asylum seekers to discuss their food requirements.⁵⁴²

In addition, the RIA conducts regular clinics throughout the country where asylum seekers are given the opportunity to discuss any issues of concern on a confidential basis. The RIA also provides anti-racism and inter-culturalism training for its proprietors, operators and staff.⁵⁴³

Is there independent review of the detention decision? Yes.

An asylum seeker detained by an immigration or police officer must be brought before a District Court judge “as soon as practicable,” which would ordinarily be at the District Court’s next sitting.⁵⁴⁴ If the judge finds detention is appropriate due to the existence of one or more of the conditions above, then the asylum seeker may be ordered detained for up to ten more days, after which the Court must re-order detention at subsequent ten-day intervals.⁵⁴⁵ If none of the conditions warranting detention exist, the Court may permit the release of the detainee subject to conditions such as specifying a particular place of residence or imposing reporting requirements. Breach of any such condition gives rise to further detention subject to the same procedure.⁵⁴⁶ Aliens who are suspected to have stayed beyond the expiration of a removal order also may be detained. In this instance, detention is not reviewed until the alien institutes proceedings to challenge the removal order.⁵⁴⁷

Are there limits on the period of detention? No, except in the case of asylum seekers who have been ordered deported (8 weeks).

The Refugee Act 1996 (as amended) provides for no time limit for detention of asylum seekers awaiting a decision on admissibility who fall under any of the “reasonable suspicion” categories described above.⁵⁴⁸ Asylum seekers may be detained for no longer than the first 48 hours in any one of a number of police stations, or indefinitely in prisons and designated places of detention.⁵⁴⁹

Aliens in violation of their removal order may be detained for a maximum of 8 weeks.⁵⁵⁰ Time spent in custody while appealing a deportation order does not count towards this maximum.⁵⁵¹

Is there periodic review of detention? Yes; 10 days.

According to the Department of Justice, Equality and Law Reform and the Refugee Act 1996 (as amended), the detention of asylum seekers detained is reviewed every ten days before the District Court.⁵⁵²

Is there access to government-funded legal aid? Yes.

Indigent asylum seekers are provided with legal aid throughout the asylum process from the Refugee Legal Service of the Legal Aid Board and the Department of Justice, Equality and Law Reform.⁵⁵³ However, it is up to the asylum seekers themselves to access these legal services. There is a nominal fee of €20 for these legal advice and representation services.⁵⁵⁴

Vulnerable groups: Section 9(12)(a) of the Refugee Act 1996 (as amended) states that persons under 18 cannot be detained.⁵⁵⁵ Separated children and unaccompanied minors

are dealt with in accordance with the provisions of the Childcare Act 1999 and fall under the responsibility of the Health Board.⁵⁵⁶ Where it appears to an immigration officer that a child entering Ireland is unaccompanied by an adult, she is required to inform the local Health Board.⁵⁵⁷ An application for appointment of a legal guardian (guardian *ad litem*) may be made to the High Court on behalf of such minors,⁵⁵⁸ but it is the local Health Board where the separated child arrives that has the legal obligation to ensure that the best interests of the child are taken into account.⁵⁵⁹ Social workers are assigned to separated children, who are typically housed at hotels or hostels.⁵⁶⁰

According to ECRE, the number of separated children arriving in Ireland continued to rise in 2001. As a result, Health Board authorities have taken steps towards establishing separate centers for the minors, rather than housing them with adults.⁵⁶¹ Prior to June 2001, unaccompanied minors who turned 18 years were provided with financial assistance to rent private accommodation and entitled to full welfare allowance. After June 2001, however, minors who turned 18 and had completed full-time education, subject to an eligibility assessment, are offered accommodation only in accommodation centers.⁵⁶²

Women and separated children were provided assistance from 1999 until June 2000 through a UNHCR-funded project at the Irish Refugee Council's Legal Unit.⁵⁶³ The Irish Refugee Council does not legally represent any asylum seekers during the asylum process, but offers legal advice and advocates for best practice.

ISRAEL

Israel is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. In 2001, 390 new applications were submitted for asylum in Israel. Out of all applications pending a decision, including some earlier cases, 27 asylum seekers were granted refugee status, 81 were given temporary status, and 6 were resettled in other countries. 83 applications were rejected.

Asylum seekers are not as a rule detained in Israel unless they hail from an "enemy or hostile" country. Even though Israel is a signatory to the 1951 Convention and the 1967 Protocol, it has not yet enacted any legislation to directly address asylum seekers. The UNHCR in Israel had been mainly responsible for dealing with asylum seekers up until the beginning of the year 2001 when the Ministry of Interior approved an internal procedure. Under the new procedure, the UNHCR still handles initial applications for asylum. It interviews applicants and has the power to confer asylum-seeking status. A National Status Granting Body (NSGB), which began operating irregularly at the start of 2002, confers refugee status. Administrative rules and regulations, rather than national legislation, therefore dictate the treatment of asylum seekers.⁵⁶⁴

An amended Entry Into Israel Law 1952, which stipulates the terms and procedures for the detention of those who have entered into or are staying in Israel illegally, also went into effect on November 8, 2001. According to the revised law, undocumented foreigners may be detained only after the issuance of an appropriate order from immigration authorities and after the detainee has had the opportunity to state his/her claims before the issuing authority. In those cases where a hearing cannot be conducted before the issuance of the order, a hearing must be held no more than 24 hours from the beginning of detention. Where a detention order has been issued, the undocumented foreigner is informed of his rights including his right to notify, should s/he wish to do so, someone close, a lawyer and his/her Embassy or Consulate. Although an undocumented foreigner may be released if it is later discovered that his/her status was determined erroneously, immigration authorities may refuse to release from detention those who are considered to present a danger to national security and public security or health.⁵⁶⁵

While there is no official policy of detention of asylum seekers, undocumented foreigners are regularly detained and held in one of two facilities for deportees. Problems arise when asylum seekers, who often are not aware of the internal procedure because the Ministry of Interior does not publicize it, are detected before they apply to the UNHCR for status and are detained for being an undocumented foreigner. According to the Public Interest Law Resource Center at Tel Aviv University, the UNHCR does not believe the lack of publicity to be a problem as the agency believes that word of mouth suffices as a substitute.

If an asylum seeker is detained, he/she can still apply for asylum to the UNHCR from the detention facility but will have to wait in detention until the NSGB, who is supposed to give such cases priority, makes its final decision. Although statistics based on the new procedure have not been compiled, advocates point out that refugee status took some two years before the new procedure was implemented in 2002.⁵⁶⁶

An undocumented foreigner seeking asylum may be detained even after he/she has applied to the UNHCR because the asylum seeker may still have not received documentation proving asylum-seeking status. Such documentation from the UNHCR, meant to deter detention, is not normally issued before the process is concluded some three months from initial application. If the asylum seeker happens to be detained in the three-month interim, the UN agency will intervene and attempt to facilitate release.⁵⁶⁷

If an asylum seeker is detained even after the UNHCR has conferred status, the detention will normally last only a few days, as the agency will intervene and lobby for release.⁵⁶⁸

Most asylum seekers escape detention, mainly because the two detention facilities for deportees, that hold up to three hundred detainees, are normally filled to capacity.⁵⁶⁹ Oftentimes detained illegal residents' passports are retained illegally by their Israeli employers thus slowing down the deportation process and keeping detention facilities

full. The Hotline for Migrant Workers in Tel Aviv estimates that only about ten asylum seekers are detained each year. As of August of 2002, there were only eight in prison.⁵⁷⁰ Most detainees reported that they were made aware of the internal process only after social workers met with them. Advocates fear that numbers of detained asylum seekers will rise as a result of Israel's Prime Minister's recently-announced intention to expand detention facilities so as to facilitate the deportation of 50,000 illegal residents over the next year.⁵⁷¹

Israeli authorities reportedly ignore asylum-seeking status if the asylum seeker originates from a "hostile or enemy" country, as nationals of such nations are as a rule detained.⁵⁷² The 1954 Law for the Prevention of Infiltration subjects any enemy national who knowingly and unlawfully enters Israel to five years' imprisonment. Authorities do not always bring charges under this law, but detain such nationals based on security concerns. Asylum seekers who fall under this category can thus be detained for years at times. The UNHCR sometimes succeeds in resettling enemy nationals who are not considered to pose a security threat in another country. Israel will generally not grant them asylum and will release them only under restrictive conditions.⁵⁷³

Is there independent review of the detention decision? No

According to the newly amended Entry Into Israel Law 1952, there is a quasi-judicial Reviewing Authority that is supposed to review Ministry of Interior detention decisions no more than fourteen days following detention. Detainees may also petition the tribunal at any time and may request a reconsideration of their case if there has been a change in their circumstances. Further, any person may petition the High Court of Justice to review any governmental authority decision. An undocumented foreigner who has been detained may therefore submit a petition with regard to either the initial decision by the immigration authorities to detain, or with regard to the decision of the tribunal.⁵⁷⁴

The Hotline for Migrant Workers, however, has documented extreme violations of these stipulations. According to its director, six percent of males remain in jail for more than thirteen days.⁵⁷⁵ Women, on average, according to the survey, remain detained for more than 15 days.⁵⁷⁶ Furthermore, while a detainee has the right to petition for additional review of their detention, most detainees are not aware of this option rendering the right to appeal ineffective. Many who are aware of the option are deterred by the fact that they are responsible for all fees incurred during this process.⁵⁷⁷

Advocates also criticize the law, for providing an undocumented foreigner less safeguards against illegal detention than a detained criminal is provided. While the Entry Into Israel Law requires reviews within fourteen days of detention, the 1996 Criminal Procedure Law requires a detainee to be brought before a judge within twenty-four hours from initial detention, and within forty-eight hours in exceptional cases.

The independence of the Reviewing Authority has also been questioned, as it is comprised of two judges who are commissioned by the Ministry of Interior. The Ministry appoints them and pays for their salaries.⁵⁷⁸ When one of the two lawyers serving on the body went on vacation, a Ministry legal advisor simply filled the position.⁵⁷⁹ The body has also not yet overturned a Ministry decision since it was formed in November of 2001.⁵⁸⁰

Members of leading civil rights organizations have petitioned the government to call this practice unconstitutional. The petition points to many problems regarding the reviewing authority and claims that an administrative authority should not have the power to restrict one's basic right to freedom.⁵⁸¹

Are there limits on the period of detention? No

Some will remain in prison for months or even years. The fact that a detainee has been in prison for 60 days can be used a basis of release on bail.⁵⁸²

Is there periodic review of detention? No

The amended Entry into Israel Law stipulates that the Reviewing Authority may decide to review its decision to detain again, as long as the second review is scheduled for no more than thirty days later. This second review, however, is not an obligatory measure. Detainees may also petition for further review by both Reviewing Authority as well as the High Court of Justice, but as mentioned earlier, it has been reported that most are not made aware of this option.⁵⁸³

Is there access to government-funded legal aid? No

A detained asylum seeker will have access to a government-funded Public Defender only if he/she is facing criminal charges as well. Legal aid bureaus also do not normally represent people in administrative detention procedures, according to the Entry to Israel Law. Theoretically, the bureau may step in, however, if a person has a legal claim to stay in Israel. Possibility of pro-bono representation by non-governmental organizations or private lawyers is also very limited.⁵⁸⁴

Alternatives to detention: None.

According to the Entry into Israel Law, alternatives to detention of illegal residents are to be sought only in exceptional circumstances. Tel Aviv University's Public Interest Law Resource Center points out that this law stands in sharp contrast to Israel's regular Detention Law which requires that detention be used only when there are no other alternatives.⁵⁸⁵

Vulnerable groups:

Women are separated into a separate facility for the detention of illegal residents. They, however, tend to wait longer than men before they are brought before the Reviewing Authority.⁵⁸⁶

ITALY

Italy is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. An estimated 16,000 asylum applications were filed during 2000, and by the end of the year, 12,000 asylum seekers were awaiting first instance decisions.⁵⁸⁷ In 2001, an estimated 10,000 to 12,000 asylum seekers filed claims.⁵⁸⁸

The 2001 Immigration and Asylum Bill was approved by the Italian parliament on July 10, 2002.⁵⁸⁹ The Bill contains two articles governing the right to asylum, which replace the asylum provisions of the 1990 Aliens Act.⁵⁹⁰ NGOs and other organizations, such as the Jesuit Refugee Service and Fondazione Centro Astalli, have heavily criticized the new law, which introduces measures such as mandatory detention and restrictive appeal procedures, and limits financial assistance to asylum seekers.⁵⁹¹ This new legislation is expected to come into force at the end of September 2002.⁵⁹²

Under the 1998 Aliens Act, any foreign national entering Italy illegally whose identity is not established may be detained at a temporary holding center.⁵⁹³ The 2001 Immigration and Asylum Bill provides for the mandatory detention of these immigrants. At these centers asylum seekers who are apprehended at border entry points are held for hours, or possibly days. Those who arrive by air are detained in the transit zone of the airport until the Border Police decides on their admissibility. Once admitted, asylum seekers are released, referred to the normal asylum procedure and issued three-month renewable residence cards.⁵⁹⁴

There was no formal pre-screening stage for manifestly unfounded claims under the 1998 Aliens Act. Prior to the new legislation, only the Central Commission for the Recognition of Refugee Status was authorized to decide upon asylum claims and its decision was final.⁵⁹⁵ The 2001 Immigration and Asylum Bill restricts the movements for up to two days of asylum applicants whose claims are “manifestly unfounded” in the pre-screening stage, regardless of manner of entry or place of application.⁵⁹⁶

Accommodation in reception centers is available, but not compulsory. Many of these centers are run by charitable organizations (*i.e.*, Italian Caritas, Centro Astalli), NGOs (*i.e.*, Casa dei Diritti Sociali in Rome) and social cooperatives.⁵⁹⁷ A smaller number are

run directly by the local government. There are also limits on lengths of stays. In 2001, for the first time, a National Asylum Program, known as *Piano Nazionale Asilo* (PNA), was set up by the Ministry of Interior, the UNHCR and the Association of National Town Councils (“Associazione Nazionale Comuni Italiani”), to accommodate 2000 asylum seekers in a network of 60 town councils. The future of PNA is uncertain given the passage of the 2001 Immigration and Asylum Bill.⁵⁹⁸

Indigent asylum seekers who are not housed in a reception center are provided with some state-funded financial assistance, about 34,000 Lire per day, for up to 45 days.⁵⁹⁹

Is there independent review of the detention decision? Yes.

There is judicial review of the decision to detain within 48 hours of detention, which may then be appealed to the Supreme Court of Appeal.⁶⁰⁰

Are there limits on the period of detention? Yes; 20-30 days.

There is a twenty-day maximum for the detention of asylum seekers whose identity cannot be established. In addition, there is a thirty-day maximum for detention of undocumented asylum seekers awaiting deportation.⁶⁰¹

Is there periodic review of detention? No.

Is there access to government-funded legal aid? Limited.

Under the 2001 Immigration and Asylum Bill, asylum seekers are entitled to free legal aid when appealing the Commission’s decision and can request this aid from the Commission for Free Legal Aid.⁶⁰² Asylum seekers who appeal the Commission’s decision, however, can be forced to repatriate by the local representative of the national government (“*Prefetto*”) before a final decision is rendered.⁶⁰³

Other than these measures, there is no right to legal aid for asylum seekers, nor is there a right to have an attorney present before the Central Commission for the Recognition of Refugee Status. Free legal aid may be provided by NGOs, which are given access at border points and transit zones to provide information to asylum seekers held there.⁶⁰⁴ In practice, however, NGO presence is scarce and only some asylum seekers have access to free legal assistance by NGOs before appeals.⁶⁰⁵

Vulnerable groups: Section 1(5) of the 1990 Aliens Act requires police authorities to immediately inform the Juvenile Court about any unaccompanied minor under the age of 18 so that the child may be appointed a guardian (“*Giudice Tutelare*”) by the Civil Court.⁶⁰⁶ Unaccompanied minors cannot be expelled or detained and are often accommodated in reception centers for minors, or, depending on their age, assigned a foster family.⁶⁰⁷ However, when they reach the age of 18, their residence permit is no

longer renewable and they are treated as illegal migrants.⁶⁰⁸ Unaccompanied minors may be appointed a legal guardian and must be assisted by their guardian when applying for asylum and when before the Central Commission for their final interview.⁶⁰⁹ In practice, because there are no specific provisions governing asylum applications lodged by minors, the same procedures used for adults are applied.⁶¹⁰ Legal and social assistance, health care and education are provided to unaccompanied minors on a priority basis.⁶¹¹

JAPAN

Japan is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. Asylum seekers filed 216 applications for asylum in 2000.⁶¹² In 2001, 353 asylum seekers applied for asylum; of those, only 26 were granted asylum.⁶¹³ During 2001 the percentage of asylum seekers in detention reached levels well above those in other industrialized countries, with the exception of Australia, though actual numbers of detained asylum seekers are lower in Japan because of the relatively low number of asylum seekers reaching Japan.⁶¹⁴

Immigration Officers may provide asylum seekers with permission to land to claim asylum. This is exceptionally rare, with only two such cases in five years. This provision was initially implemented for Indochinese boat people, and has not been used widely in a decade. As a result, there has reportedly been an increase in smuggling, particularly of Chinese asylum seekers. Further, after admission, asylum seekers do not have any status and are not able to obtain an alien registration card or identification card. This means that they cannot work or obtain social welfare including health insurance.⁶¹⁵

1997 amendments to the Immigration Control and Refugee Recognition Act provide that any alien arriving at a port of entry without valid documents must be detained at an immigration detention facility. There are no exceptions to the policy of mandatory detention, and no distinction is made for aliens who have expressed a desire to apply for asylum.⁶¹⁶ While immigration examiners can subsequently grant provisional release based on factors such as the strength of an asylum seeker's claim, his/her financial situation or character, refugee advocates report that immigration examiners often deny provisional release until the asylum seeker has been detained for months or one year.⁶¹⁷ According to a 2002 report by Amnesty International, a daily average of seven persons are detained in airport detention facilities in Narita Airport alone.⁶¹⁸ Asylum seekers are detained until they are granted provisional release, which usually is not granted until after one year in detention. During this time, they are detained in detention facilities on the airport premises known as Landing Prevention Facilities or at Airport Rest Houses near the airport site.⁶¹⁹ In practice, very few asylum seekers make their claim at the airport; most are smuggled in and make a claim after entry. Asylum seekers who apply in-country are not detained during the initial decision-making process, but are detained during the appeal if the initial decision on the asylum claim is negative. These asylum

seekers are detained on the same day that their claim is initially rejected, and are told the reasons for detention.⁶²⁰

Is there independent review of the decision to detain? Yes, but not meaningful.

The Refugee Recognition Act does not provide for any independent review of the decision to detain, which is made by a Special Inquiry Officer. The Act provides for a Special Inquiry Officer to interview a foreign national once an Immigration Inspector finds his or her documents to enter or depart do not conform with requirements of the Ministry of Justice Ordinance. If a detained alien raises a refugee claim, immigration inspectors who investigate the claim (who are not independent) may make a recommendation for provisional release.⁶²¹ An NGO and the media have, however, reported that refugees are not always given prompt access to the asylum procedure or adequate interpretation facilities, and may remain in detention for long periods of time.⁶²²

Once entry is denied on the basis of the interview, the Special Inquiry Officer issues an “order to leave” Japan, which can only be implemented once the asylum seeker signs a document waiving her rights to appeal against the decision of the immigration officials. There have been allegations that officers have threatened asylum seekers, in some cases with physical force, to sign the document.⁶²³ In practice, once an “order to leave” is issued, the alien falls under the responsibility of the air carrier or shipping company which brought them to Japan. The air carrier or shipping company is then responsible for detaining the alien and paying for security and other necessary expenses.⁶²⁴ Asylum seekers have reportedly been forced, sometimes through beatings, to pay for their accommodation.⁶²⁵

Asylum seekers can make a claim to a regional court for review of detention or can make a habeas corpus claim. Japanese NGOs report that they have never heard of a successful appeal of detention through either of these routes.⁶²⁶

Are there limits on period of detention? Not generally; in some cases, 60 days.

The Refugee Recognition Act does not provide for any limits on the period of detention effected at an airport. Detention to prevent absconding is limited to thirty days, which may be extended by a Special Inquiry Officer for an additional thirty days.⁶²⁷ Detention to investigate and inspect whether a violation of immigration law has taken place is limited to sixty days.⁶²⁸

In practice, asylum seekers are detained for at least a year before they are granted provisional release. However, once deportation has been ordered, asylum seekers can be detained indefinitely.⁶²⁹

Is there periodic review of detention? No.

The Refugee Recognition Act does not provide for any review of detention. An asylum seeker could make an unlimited number of applications for habeas corpus relief, but it has been reported that no such application has ever been granted.⁶³⁰

Is there access to government-funded free legal aid? Very limited.

The Japan Legal Aid Association reports that it provided legal aid to 12 people under its “refugee aid” program in 1999.⁶³¹ The Legal Aid Association is an implementing partner of the UNHCR, and its funds come both from the UNHCR and the government. The funds cannot be used for foreigner overstays, and are only available in severe cases. The Association is currently looking for private funding, and is not sure it will be able to continue due to financial constraints.⁶³²

Alternatives to detention: Japan has a reporting system but its availability is limited. After one year of detention, asylum seekers can be released and report to an immigration center each month. Overstayers can also avail themselves of this option. However, they must post a bond of up to three million yen (approximately \$25,000).⁶³³

Vulnerable groups: There are no programs to address the needs of vulnerable groups, including minors. At least one child asylum seeker was reportedly detained at an airport detention facility.⁶³⁴ Each case is dealt with on an exceptional basis, which may be generous but reportedly has an equal chance of failing to meet international standards.⁶³⁵

KENYA

Kenya is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. Kenya hosted approximately 245,000 refugees at the end of 2001.⁶³⁶ Kenya has no refugee law and consequently, no formal asylum procedure.⁶³⁷ The detention of asylum seekers occurs on an ad hoc and incidental basis, and is common.⁶³⁸

The detention of asylum seekers takes place at two levels. First, detention occurs at the border points, including airports, when asylum seekers are physically crossing the Kenyan border into the country. Second, detention occurs when asylum seekers are arrested within the country, especially in urban areas, for lack of documentation declaring their status. However, as a Kenyan NGO explained, because the government does not actually issue any documents, there is not basis for this type of arrest.⁶³⁹ Upon arrest, asylum seekers are usually brought before the courts and formally charged with immigration offenses. More often than not, they are sentenced to short periods of imprisonment and thereafter, deported to their home countries.⁶⁴⁰

Is there independent review of the decision to detain? Yes, but only at the intervention of NGOs.

At both levels of detention, the decision to detain is made by the Kenyan police and Immigration officials, and is not based on any particular set of factors.⁶⁴¹

An appeal of the decision to detain can only happen at the intervention of lawyers, which NGOs, such as the Refugee Consortium of Kenya (RCK), are able to do if information regarding the arraignment is timely received.⁶⁴²

Are there limits on the period of detention? No.

Periods of detention vary greatly. Before they are formally charged in court, asylum seekers are detained at police stations for periods of between one day to many months. This detention is for any charge, mostly illegal presence in Kenya as a result of a lack of documentation.⁶⁴³ Upon trial and conviction, asylum seekers can be imprisoned for one to twelve months. As with the decision to detain, the periods of detention are determined ad hoc and are not based on any particular set of factors.⁶⁴⁴

Is there periodic review of detention? No.

Is there access to government-funded free legal aid? No.

The only free legal aid available to refugees and asylum seekers in Kenya is that provided by the Legal/Referral Programme of the RCK. Upon receipt of reports of detention of asylum seekers, staff representing this NGO visit detained asylum seekers and try to secure their release.⁶⁴⁵ The RCK also represents these asylum seekers in criminal proceedings. Lawyers on the Programme visit police stations and intervene on behalf of the refugees to the officers commanding the police stations. The lawyers represent the refugees, informing the police of UNHCR procedures and the meaning of documents in the possession of the asylum seekers. The lawyers also represent the asylum seekers in court, where they request the magistrates to drop the charges against them.⁶⁴⁶

REPUBLIC OF KOREA (SOUTH KOREA)

South Korea is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. South Korea hosted an estimated 650 refugees and asylum seekers at the end of 2001.⁶⁴⁷ The majority were North Korean refugees, who are not required to apply for asylum. South Korea received 29 new asylum applications during 2001. The government approved only one application, with 64 cases pending at year's end.⁶⁴⁸ During the last year or so, the media has reported extensively on the stories of North Koreans who have sought to "defect" to South Korea, in one case by entering the UNHCR office in Beijing.⁶⁴⁹

Detention of asylum seekers is infrequent, although there have been reports of increased detention of asylum seekers in the wake of the September 11 terrorist attacks in the

United States.⁶⁵⁰ USCR reports that in the weeks following the September 11 terrorist attacks, South Korean officials interrogated all asylum seekers of Arab or Central Asian origin, detaining those who were in even minor violation of immigration laws.⁶⁵¹

South Korea has no internal or national refugee law. There is also very little public awareness or support for refugees. The government is reportedly reluctant to receive asylum seekers, and practices a variety of interception practices. Asylum seekers without proper entry documents are not recognized by the government. Instead, their applications are sent to the UNHCR, which provides them with temporary three-month papers.⁶⁵² In 2001, South Korea amended its deadline for applying for asylum from 60 days after arrival in the country to one year. The deadline has been effective as of 2002.⁶⁵³

The Ministry of Justice processes asylum applications in a committee joined by the Ministry of Foreign Affairs. Applications are filed with Immigration (part of the Ministry of Justice) and the UNHCR. The asylum application process should last for three months but is often delayed.⁶⁵⁴

Rejected asylum seekers are not detained. They are given sixty days to three months notice to leave, which can be extended. In practice, such extensions are difficult to obtain. There is an appeal process but it is difficult to access.⁶⁵⁵

In general, South Korea's detention policies for asylum seekers have been reported to be vague and arbitrary, and detention conditions are not subject to independent review by either judicial or administrative bodies.⁶⁵⁶ Moreover, although asylum seekers are allowed to contact UNHCR, they do not have access to competent or independent interpreters.⁶⁵⁷

North Koreans are not dealt with as refugees. Under the South Korean constitution, once North Koreans have left their country, South Korea can take responsibility for them. Towards the end of 2001, however, South Korea's national assembly adopted a resolution urging the government to establish a new idea of 'refugee' that would include North Koreans and to augment its diplomatic efforts on behalf of North Korean defectors.⁶⁵⁸ The South Korean government provides hostels for North Koreans on arrival and starting funds to begin their lives, as well as apartments on occasion. However, the police track North Korean refugees for three years.⁶⁵⁹

Is there independent review of the decision to detain? No.

Are there limits on the period of detention? No.

The USCR reports that the South Korean government released a group of asylum seekers detained because of their Arab or Central Asian origin in the wake of the September 11

attacks after nearly two months, but only after receiving guarantees from Korean sponsors.⁶⁶⁰

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

The government does not provide material assistance to asylum seekers who enter the country.⁶⁶¹

LITHUANIA

Lithuania is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. In 2000, 199 asylum applications were filed, and at the end of the year 63 applicants were awaiting first instance decisions on their applications.⁶⁶² By year's end 2001, Lithuania had received 256 asylum applications.⁶⁶³ After September 11, Lithuanian authorities appeared to take additional security measures with respect to asylum seekers from Afghanistan. A group of 30 Afghan asylum seekers who arrived before September 11 were still being held at year's end in detention on vague national-security grounds.⁶⁶⁴

Asylum seekers may submit asylum applications upon entry to the Lithuanian border police at state border points, city police precincts, the Foreigners Registration Center and other state or municipal authorities.⁶⁶⁵ The Migration Department decides admissibility within 48 hours of submission of the asylum application. If the foreigner is admitted, his or her legal status changes to that of an asylum seeker.⁶⁶⁶

In practice, few asylum seekers are detained; in a 2001 report, ECRE reported that only five asylum seekers had been detained since September 2000.⁶⁶⁷ Section 12(1) of the Law on Refugee Status 2000 lists five grounds under which asylum seekers may be detained: (1) to prevent the foreigner from unauthorized entry into the country; (2) when actions are taken with regards to deportation of a foreigner; (3) to ascertain the reasons why the foreigner has used forged identity documents or destroyed them; (4) to prevent the spread of infectious diseases; and (5) on grounds provided by the laws of the Republic of Lithuania.⁶⁶⁸ According to Section 12(2) of the Law on Refugee Status, police authorities may detain arrivals who enter illegally, including those without valid travel documents, for up to 48 hours for identity determination and other purposes.⁶⁶⁹ After this 48-hour period has elapsed, detention can be prolonged only by the decision of the court, which may order transfer of the asylum seeker to the Foreigners Registration Center in Pabrade pending a decision on admissibility.⁶⁷⁰

Asylum seekers who have submitted applications are accommodated at the Foreigners Registration Center until the Migration Department makes a decision on the procedure

for examining the application. If the asylum seeker's application is being examined under the regular procedure, she is accommodated at the Refugee Reception Center. According to Article 13 of the Law on Refugee Status, asylum seekers who legally arrived or reside in Lithuania are permitted to stay in a place of residence of his choice.⁶⁷¹ The Refugee Reception Center houses men and women separately, and cooking facilities are provided. Asylum seekers must apply to the director of the center for leave to travel within the country for up to 72 hours, which is regularly granted. Allowance for clothing, medical treatment and other services are provided for those at the center.⁶⁷²

In January 2002, the Lithuanian Parliament adopted the amendments to the Law on Refugee Status (the "Refugee Law Amendments").⁶⁷³ The Lithuanian Parliament rejected an alternate bill, offered by the State Security Department, that would have introduced mandatory detention of asylees.⁶⁷⁴⁶⁷⁵ The amendments provide that when the ground for detention is being established, the Court should adopt a decision to apply alternatives to detention after it has taken into account the circumstances and characteristics specific to the foreigner, including his/her vulnerability and the level of his/her threat to society, as well as other circumstances important to the refugee status determination procedure. These alternative measures include requiring the foreigner to present him/herself periodically to the territorial police and to inform the territorial police about his/her location at a certain time. Under the new law, foreigners may request accommodation from an NGO, a Lithuanian citizen or a non-citizen relative who is legally residing in the Republic of Lithuania, provided that the foreigner fulfills his/her obligations provided in the Law on Refugee Status.⁶⁷⁶

Is there independent review of the detention decision? Yes.

After the 48-hour detention period for identity determination has elapsed, detention can be prolonged only by the decision of the court, which may order transfer of the asylum seeker to the Foreigners Registration Center in Pabrade pending a decision on admissibility.⁶⁷⁷

The possibility of review of a detention decision is provided by the Order of the Minister of Internal Affairs of the Republic of Lithuania (Oct. 5, 2001), which regulates the examination of asylum applications. Under Point 23 of the Order, officials of the Foreigners Registration Center, where asylum seekers are detained by court decision, must evaluate the grounds for detention every month of the detention. If these officials find that there are no grounds for the detention, they are to apply to the court for abolishment of the detention.⁶⁷⁸

Although asylum seekers themselves cannot seek independent review of detention, if the Foreigners Registration Center does not fulfill its obligation to apply to the court for abolishment of the detention, they may make a complaint to the court against the Foreigners Registration Center for failure to act.⁶⁷⁹

The Refugee Law Amendments establish independent review, periodic review of detention and limits on the period of detention.⁶⁸⁰ According to its provisions, the district court, no later than 10 days within receipt of the request of the Foreigners Registration Center, shall review the decision to detain the asylum seeker and adopt one of the following decisions: (1) uphold the decision to detain the asylum seeker; (2) reconsider the decision to detain the asylum seeker; or (3) reverse the decision to detain the asylum seeker and obligate the Migration Department to adopt a decision with respect to accommodation of the asylum seeker without restriction to his/her freedom of movement.⁶⁸¹

Are there limits on the period of detention? 12 months.

Prior to the adoption of the Refugee Law Amendments, asylum seekers who were detained in the Foreign Registration Center had to remain in detention until they were granted refugee status unless the court ordered otherwise.⁶⁸² Asylum seekers therefore could only be detained for the period of the examination of their asylum application. Section 16 of the Law on Refugee Status states that the total period for examination of the asylum application shall not exceed 12 months.

The Refugee Law Amendments amending and supplementing the Law on Refugee Status explicitly provides that the whole period of the detention of an asylum seeker may not exceed 12 months.⁶⁸³

Is there periodic review of detention? Yes.

As stated above, Point 23 of the Order of the Minister of Internal Affairs of the Republic of Lithuania (Oct. 5, 2001) provides for monthly review of the grounds for detention by officials of the Foreigners Registration Center.

Is there access to government-funded legal aid? Yes.

Asylum seekers have access to free legal assistance, which is funded by the Government at all stages of the asylum procedure. Legal assistance is provided by the lawyers of the Legal Assistance Project to Refugees and Asylum Seekers of the Lithuanian Red Cross. The Government funds legal consultations by the Lithuanian Red Cross at the border, the Foreigners Registration Center, the Refugee Reception Center and other locations. It also provides funds for asylum interview and appeal procedures.⁶⁸⁴ In addition, government-funded interpreters are required during investigation of an asylum seeker.

Alternatives to detention: The amendments provide that when the ground for detention is being established, the Court should adopt a decision to apply alternatives to detention after it has taken into account the circumstances and characteristics specific to the foreigner, including his/her vulnerability and the level of his/her threat to society, as well as other circumstances important to the refugee status determination procedure. These

alternative measures include requiring the foreigner to present him/herself periodically to the territorial police and to inform the territorial police about his/her location at a certain time. Under the new law, foreigners may request accommodation from an NGO, a Lithuanian citizen or a non-citizen relative who is legally residing in the Republic of Lithuania, provided that the foreigner fulfills his/her obligations provided in the Law on Refugee Status.⁶⁸⁵

Vulnerable groups: Article 12 of the Law on Refugee Status states that minors shall be detained in exceptional cases only. The Bylaws set special requirements for the examination of their asylum applications.⁶⁸⁶ Between 1999 and 2000, 11 unaccompanied minors applied for asylum. Representatives from the Children's Rights Protection Service Representatives, a governmental organization, attended their asylum interviews at the Foreigners Registration Center.⁶⁸⁷

The Refugee Law Amendments provide that a guardian shall be appointed when an issue pertaining to the detention of an unaccompanied minor is being considered in court. It also explicitly states that the Law on Fundamentals of Protection of the Rights of the Child, which provides that the best interests of the child must be taken into account, must be observed when imposing detention on an unaccompanied minor. In addition, the amendments provide temporary guardianship for unaccompanied minors and the right for separated children granted refugee status to be reunited with family.⁶⁸⁸ Officers conducting the investigation of an unaccompanied minor's case are required to make inquiries to other foreign countries, except his country of origin, concerning the whereabouts of the minor's parents.⁶⁸⁹

The Bylaws foresee special requirements for the investigation, particularly the order of interviewing, of traumatized persons, single women and minors. However, special detention conditions for these groups are not foreseen.⁶⁹⁰

LUXEMBOURG

Luxembourg is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. 628 asylum seekers applied for asylum during 2000; of the 1,800 total asylum requests examined, 100 were approved.⁶⁹¹ By year's end 2001, 689 asylum applications had been lodged.⁶⁹² In the first quarter of 2002, 157 applications were filed.⁶⁹³

Asylum seekers are detained by the Ministry of Justice if their identification is false or non-existent, if they entered illegally at the airport, or if they apply for asylum after their attempt at illegal entry has been refused by border control.⁶⁹⁴ Generally, detention of asylum seekers is uncommon.⁶⁹⁵ In 2001, the administrative court and the appeal court held that detaining asylum seekers in prison prior to their deportation was unlawful and

that such imprisonment should be applied restrictively in very specific cases (*i.e.*, reasons of public order).⁶⁹⁶ Asylum seekers must reside in open reception centers, or designated hotels or houses until a final decision is made on their claims. Asylum seekers can be detained while awaiting transfer to a Dublin Convention country, but this is not often done in practice.⁶⁹⁷

Once they have registered with the Refugee Reception Office of the Ministry of Justice, asylum seekers are sent to the Social Department of the Government Commission for Foreigners (CGE), where they are interviewed with a social worker to evaluate their needs in terms of housing, basic needs, and health care.⁶⁹⁸ Single men are housed separately, and, if not placed in the reception centers, families are generally housed in a hotel or youth hostel. These accommodations are free unless the asylum seeker has the means to pay for them. Asylum seekers without family members in Luxembourg stay at a CGE reception center, a center run by an NGO, or a hotel. In exceptional cases, asylum seekers can find private accommodation, which the CGE will pay for.⁶⁹⁹ Asylum seekers must reside in a designated accommodation, whether a reception center or otherwise, until a final decision is taken on their claim. These accommodations are open and generally, there are no restrictions on the movement of asylum seekers into and out of the centers.⁷⁰⁰ The free movement of asylum seekers depends on the time spent for the asylum procedure and on the time needed to return rejected persons.⁷⁰¹

Asylum seekers have a monthly reporting requirement to renew their asylum seeker permit, which enables them to receive monthly financial aid.⁷⁰² Depending on the type of accommodation, asylum seekers may receive full board, half board, or may cook for themselves.⁷⁰³ Asylum seekers receive medical benefits and financial assistance from the government.⁷⁰⁴ Further, NGOs provide free clothing, and asylum seekers may enroll in a free course after three months, such as language classes.⁷⁰⁵ Families, single women and single men are housed separately in reception centers.⁷⁰⁶ Due to changes in these procedures in early 2002, asylum seekers are now granted the same social aid during the whole asylum procedure until a final decision is made.⁷⁰⁷

If a decision is finally refused, the asylum seeker is provided with food and housing until removal.⁷⁰⁸

Is there independent review of the detention decision? Yes.

If the Ministry of Justice cannot be contacted, the decision to detain aliens with falsified travel documents for up to 48 hours must be confirmed by the public prosecutor's department.⁷⁰⁹ Review is not automatic, and must be initiated by the asylum seeker.⁷¹⁰ Appeals of detention may be taken to the Administrative Court initially, and then to the Administrative Court of Appeals. Administrative Courts have ordered the release of asylum seekers, finding that prisons are not appropriate facilities for foreign nationals who do not constitute a threat to national security or public order.⁷¹¹

Are there limits on the period of detention? Yes; three months.

The limit for detention due to forged documents and for pre-deportation detention is one month. The detention period can be extended, month-by-month, to a maximum of three months. In practice, however, the authorities rarely, if ever, detain asylum seekers.⁷¹²

Is there periodic review of detention? Yes; monthly.

Detention is reviewed by the Ministry of Justice on a monthly basis. Appeals may be made to the Administrative Court; decisions are rendered within 10 days.⁷¹³

Is there access to government-funded legal aid? Yes.

Asylum seekers have the right to free legal aid, paid for by the government, to assist them with their asylum interview with an officer of the Ministry of Justice.⁷¹⁴ NGOs also offer support services, in particular in connection with the filing of an appeal after an initial rejection.⁷¹⁵

Vulnerable groups: Unaccompanied minors may be appointed a guardian, but will in all cases automatically be appointed a legal representative for the whole asylum process.⁷¹⁶

MALAYSIA

Malaysia is not a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, or to the International Covenant on Civil and Political Rights or its First or Second Optional Protocols. Malaysia has no legal framework for adjudicating asylum claims.⁷¹⁷ At the end of 2001, Malaysia was host to over 57,500 refugees and asylum seekers; 256 asylum applications were pending with UNHCR at the end of the year.⁷¹⁸

All undocumented immigrants detected at or within the borders of Malaysia are subject to detention, including asylum seekers. Police have the power to arrest without warrant immigrants who cannot immediately produce, upon interrogation, documents that show legal entry. Although the 1959/1963 Immigration Act makes no mention of and provides no exception to asylum seekers or refugees, it gives the Minister power to exempt any person or class of persons from criminal charges and penalty for illegal entry.⁷¹⁹ In practice, however, persons seeking asylum are treated as illegal immigrants and may be arrested, detained and deported.⁷²⁰ Section 56(2) of the Immigration Act explicitly states that a person is subject to deportation, regardless of whether proceedings are taken against him in respect of the offense, if he has unlawfully entered, reentered or remained in Malaysia.⁷²¹

Some Rohingya asylum seekers interviewed by Human Rights Watch were detained for several months without charge or knowledge of their rights, then sentenced for illegal

entry and after serving this sentence, deported to the Thai border where they were at risk being detained and deported to Burma.⁷²² Others spent over a year in detention before being sent to the border.⁷²³

Malaysia's immigration detention camps are closed to all NGOs. In August 2001, the government increased limitations on UNHCR's already-limited access to asylum seekers and refugees in detention. Under this policy, UNCHR must obtain permission from the Ministry of Foreign Affairs to visit persons in detention.⁷²⁴ In addition, given Malaysia's accelerated efforts to deport illegal immigrants, the periods of detention before deportation are shorter, further restricting UNHCR's ability to intercede on behalf of asylum seekers.⁷²⁵ Although UNHCR staff are allowed limited access to particular visiting areas so that they may interview certain detainees, they are denied general access to the facilities. Whom they may interview is also restricted. However, former detainees interviewed by Human Rights Watch have reported horrid conditions, including routine beatings, sometimes to the point of death, and sexual abuse of both women and men.⁷²⁶

Is there independent review of detention decision? Yes, but not effective.

Though the Immigration Act provides for judicial review of detention, generally within 14 days of detention, this provision is reported to be widely ignored.⁷²⁷

Is there a limit on period of detention? No limit after order of removal.

Non-citizens may be detained for 30 days pending a decision for removal.⁷²⁸ Within 14 days of their arrest or detention, non-citizens are brought before a magistrate. Review is made and detention may be extended to allow for investigation of the charges. Violations of the Act, including illegal entry, may carry large fines, physical punishments such as caning, and a maximum sentence of five years. Those detained after receiving an order of removal may be detained for such period as may be necessary for arranging removal.⁷²⁹

Is there periodic review of detention? No.

Though the Immigration Act provides for judicial supervision of detention, in practice this is widely ignored and detainees are left for prolonged periods of time without any meaningful review.⁷³⁰

Is there free access to government-funded legal aid? Limited.

Although some refugees who are actually prosecuted under the Act have been provided with government-funded attorneys during court proceedings, most detainees are not prosecuted and are therefore not provided with an attorney prior to removal.⁷³¹ Even among those that have been prosecuted under the Act and provided with attorneys,

however, Human Rights Watch has reported at least one case where the refugee was detained for three months, then deported.⁷³²

Vulnerable groups: According to Human Rights Watch, undocumented children are detained with unrelated adults and sometimes deported without their parents.⁷³³

MEXICO

Mexico is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, and its First but not Second Optional Protocol. Mexico ratified the 1951 Refugee Convention and the 1967 Protocol in April 2000 and issued new regulations with new asylum procedures.⁷³⁴ The previous regulations had received wide criticism from NGOs.⁷³⁵

Under these new regulations, there is a strict fifteen-day deadline to submit an asylum application, and administrative review of the asylum decision by the reviewing officer's superior.⁷³⁶ If the *recurso de revisión* (administrative review) fails, the refugee applicant can appeal to the *Tribunal Federal de Justicia Fiscal y Administrativa* (Federal Tribunal for Fiscal and Administrative Justice). This decision can be challenged by an *amparo* (constitutional lawsuit) as being contrary to law.⁷³⁷ Prior to March of 2002, the UNHCR Regional Office in Mexico City recognized refugees under the UNCHR mandate, but after that date, the government began the transitional process of taking over the adjudication of asylum claims from the UNHCR.⁷³⁸

In 2001, approximately 85 percent of the 432 people seeking asylum were detained in immigration detention.⁷³⁹ Detention conditions deteriorated in 2001. After September 11, Mexico detained an increasing number of immigrants from other regions, including the arrest and detention of eighty-seven Iraqi Chaldeans in Tijuana who were filing for asylum in the United States.⁷⁴⁰

Under the Mexican Constitution the government may deport immigrants whose stay is considered "inconvenient," without providing a hearing. However, in practice, an asylum seeker will generally not be deported until the refugee determination process has concluded.⁷⁴¹

Until March 2002, Sin Fronteras, a Mexican NGO, and UNHCR would track the health of detainees, request custody when a detainee's health was at risk, and then provide accommodations for the detainee.⁷⁴²

The U.S. has reportedly provided support to authorities at the Mexico/Guatemala border to return Central American migrants traveling north with the suspected intention of attempting entry into the United States.⁷⁴³

The immigration authorities and other police authorities detain asylum seekers without proper travel documents. Once detained, they may apply for asylum at the nearest office of the Mexican National Migration Institute (INM).⁷⁴⁴ It is unclear, however, whether detainees in places other than Mexico City and Comitán Chiapas (the UNHCR office in Chiapas in 2001 received more applications than in previous years) are informed of their right to apply for asylum.⁷⁴⁵

Is there an independent review of the detention decision? No.

Although the Constitution provides for judicial review of wrongful detention, such a case is unlikely to succeed because Mexican law permits detention of undocumented asylum seekers.⁷⁴⁶

Is there a limit on period of detention? No.

On November 26, 2001, new regulations for detention centers were published in the *Diario Oficial de la Federación*. Article 7 of the regulations state the general rule that detention cannot exceed 90 days although there are various exceptions, including one for detention justified by the Coordinator of Migration Control and Verification and another when at the request of national or international organizations.⁷⁴⁷ Through a constitutional lawsuit, these exceptions could be challenged since the limit for administrative detention as established by the Constitution is 36 hours.⁷⁴⁸ There is a Supreme Court decision establishing a limit of 36 hours for administrative arrest, but in practice immigration officers prolong the detention, arguing that “arrest” is different from “*aseguramiento*” (administrative detention).⁷⁴⁹

As of 2001 Sin Fronteras is not aware of any asylum seeker held for longer than 6 months⁷⁵⁰ and reports that asylum seekers typically remain in detention for 1-2 months.⁷⁵¹

Is there periodic review of detention? No.

Under the new regulations, there is a 15 day limit for the INM to resolve the legal situation of the foreigner in detention. Detainees in detention for more than three months have their cases periodically reviewed by a committee within the INM, although this process is not regulated.⁷⁵²

Is there access to government-funded legal aid? No.

There is no state-funded legal aid for asylum seekers. Under the refugee determination procedure run by the UNHCR, interviews were “non-adversarial.”⁷⁵³ It remains to be seen whether representation will be necessary under the new procedures.

Alternatives to detention: Refugees in poor physical and mental health may be released to the care of NGOs.⁷⁵⁴ There are migrant shelters throughout Mexico, particularly along

the southern and northern borders where refugees and refugee applicants may stay at no cost. The majority of the shelters are run by religious organizations. Although there are no migrant shelters in Mexico City, Sin Fronteras has service agreements with several religious shelters where vulnerable applicants may remain while awaiting a decision on asylum.⁷⁵⁵

Vulnerable groups: The *Departamento de Integración Familiar* (Department of Family Integration) assists and holds unaccompanied minors in its custody throughout the asylum proceeding. In practice, there have been no recent requests for asylum by unaccompanied minors. If the mother is present, the minor is placed with her in the women's section of the detention center. In the past, the UNHCR has occasionally requested custody so that mothers and children can remain in a shelter during the eligibility determination.⁷⁵⁶

NAURU

Nauru is not a signatory to the Refugee Convention and has not established a formal refugee protection framework either. Nauru recently signed the ICCPR and its First Optional Protocol.

Nauru hosted approximately 800 refugees and asylum seekers at the end of 2001, with more than 300 others scheduled to be transferred to Nauru from Christmas Island soon after the New Year.⁷⁵⁷ The vast majority were Afghans and Iraqis whom the Australian government had brought to Nauru as part of a new Australian policy toward asylum seekers known as the "Pacific Solution" (see chapter on Australia above).

UNHCR initially agreed, albeit reluctantly, to process the asylum seekers brought to Nauru as part of the Pacific Solution.⁷⁵⁸ However, with the numbers and controversy surrounding the solution growing, in late September 2001 the agency refused to process new arrivals.⁷⁵⁹ Australia sent in its own immigration officials to screen the new arrivals under the minimal requirements of the Refugee Convention, rather than under Australian law.⁷⁶⁰ Those who are granted asylum remain in detention until they are resettled in third countries.⁷⁶¹ Resettlement will take 6-12 months, according to UNHCR, belying the Australian government's assertion that it does not detain refugees.⁷⁶²

Currently there is no UNHCR office in Nauru, which is covered by the office in Canberra, Australia. In the meantime, there is no ongoing independent monitoring of asylum seekers held in Nauru, asylum seekers there reportedly have no habeas corpus or other rights with which to challenge their potentially indefinite detentions, and asylum seekers have no access to legal representation.⁷⁶³ On December 6, Amnesty International issued a report describing Australia's "Pacific Solution" as "unsustainable and inhumane," and described conditions at the Nauru camp as "hellish."⁷⁶⁴

Nauru is a party to the United Nations Convention on the Rights of the Child. In May 2002, there were 243 children detained on Nauru.⁷⁶⁵

NEPAL

Nepal is not a signatory to the UN Refugee Convention, and treats asylum seekers other than the Bhutanese and Tibetan populations as illegal immigrants who may be detained at any time.⁷⁶⁶ It is a state party to the International Covenant on Civil and Political Rights, and to its First and Second Optional Protocols. Nepal was host to nearly 131,000 refugees at the end of 2001, the majority of whom were Bhutanese and Tibetan.⁷⁶⁷ Section 9 of the Immigration Act of 1992 empowers immigration officers within the Ministry of Home Affairs to investigate infractions of immigration regulations and to detain, fine, and deport persons charged with their violation.⁷⁶⁸ Although Nepal's government has no official refugee policy, it cooperates with UNHCR to assist refugees from Bhutan and Tibet. Bhutanese refugees are subject to a Joint Verification agreement entered into between Bhutan and Nepal in late 2000. Under the agreement, Bhutanese refugees are verified in order to determine their nationality status at UNHCR camps in Nepal, with a view to ultimate repatriation to Bhutan.⁷⁶⁹

Tibetans who arrived in Nepal prior to 1989 are issued refugee identity cards (RCs), which technically entitle them to "refugee status." Many Tibetans, particularly young adults and children, lack RCs. RCs must be renewed annually, a reportedly cumbersome and difficult procedure.⁷⁷⁰ According to an unpublished report by the Tibetan Justice Center, Tibetans residing and arriving in Nepal continue to be subject to detention. Even with an RC, Tibetan residents are subject to arrest and detention, especially near the northern border with China (Tibet). For example, in December 2000, the Nepalese police arrested a Tibetan resident because he traveled to a restricted area without a permit. He was held in custody until he paid a fine of 100,000 Rs (~\$1,300).⁷⁷¹

Despite the lack of an official refugee law, since about 1990 the Nepalese government has acceded to an informal arrangement, known as the "gentleman's agreement," with UNHCR and with the Tibetan government-in-exile's office in Kathmandu. The terms of the agreement provide for the transit through Nepal of newly arriving Nepalese refugees, but does not permit the resettlement of Tibetan refugees in Nepal.⁷⁷² The effectiveness of the gentleman's agreement, however, is strained by Nepal's relations with China. Due to increased pressure from China, Tibetans arriving in Nepal after 1989 are considered illegal immigrants and thus are subject to a much stricter border policy, including detention and deportation under the Immigration Act. Those who make it past the border, if apprehended by the police, are detained or threatened with deportation and turned over to the Department of Immigration. In theory, Nepalese police officers accompany them to the Department, which then contacts UNHCR.⁷⁷³

While in UNCHR's custody, Tibetans stay at the Tibetan Refugee Reception Centre situated near Swayambunath on the outskirts of Kathmandu. The Office of Tibet (Tibetan Welfare Office) administers and supervises the Reception Centre with funds received from UNCHR and foreign donors.⁷⁷⁴ Within two weeks of their arrival, Tibetans leave for India, where they may be received as refugees. There have been reports that Tibetans caught within the Nepalese border are often detained and physically mistreated by Nepalese police. Others have been forced to pay bribes or pushed at gunpoint to return to Tibet.⁷⁷⁵ Tibetans charged with immigration violations may also be detained for failure to pay a fine calculated according to the number of days they have purportedly been present in Nepal. As of September 2002, ten Tibetans were reportedly jailed in Kathmandu on these grounds.⁷⁷⁶

Is there an independent review of the detention decision? No.⁷⁷⁷

Detention is carried out by Nepalese police. Tibet Justice Center reports that the conduct of the Nepalese police is often erratic and abusive.⁷⁷⁸

Is there a limit on period of detention? No.⁷⁷⁹

Tibet Justice Center interviewed a number of Tibetans who had been detained by Nepalese police. The period of detention ranged from several hours to as long as a few days.⁷⁸⁰

Is there periodic review of detention? None discovered in research.

Is there access to government-funded legal aid? None discovered in research.

THE NETHERLANDS

The Netherlands is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. In 2000, 43,895 first-time applications for asylum were received, and at the end of the year, 17,936 were pending first instance decisions.⁷⁸¹ 32,579 asylum seekers filed applications in 2001, and in January 2002, 2,377 asylum applications were lodged.⁷⁸² In the first quarter of 2002, 6,299 applications were filed.⁷⁸³ The Netherlands is currently preparing to introduce tough immigration policies. In mid-2002, the LPF movement approved several radical measures on migration, including making all asylum seekers pay large sums of money to remain permanently in the country. Also, under the proposals, a new security force will be set up to deal exclusively with illegal immigration. Asylum seekers whose applications are unlikely to succeed should be deported within 24 hours.⁷⁸⁴

The new Aliens Act 2000 came into force on April 1, 2001. Under the new legislation, asylum seekers must lodge their application at one of four registration centers (AC's) in

Rijsbergen, Zevenaar, Ter Apel, or Schiphol Amsterdam Airport.⁷⁸⁵ Within 48 hours of entry, the Immigration and Naturalization Service (called the “IND”) determines admissibility and refers cases to the accelerated procedure. During this time, asylum seekers remain in the AC, where they are screened for admissibility.⁷⁸⁶ When it appears impossible to make a decision through this accelerated procedure, applicants are referred to a Screening and Reception Center (OC), where there is more time to process their claims.⁷⁸⁷ Applicants with admissible claims undergo a second, more extensive interview, which forms the basis for assessment of their claims.⁷⁸⁸ The IND always detains individuals arriving by air who are determined to have inadmissible or “manifestly unfounded” claims unless they are unaccompanied minors.⁷⁸⁹

Asylum seekers found to be admissible are referred to one of several open Reception Centers and later to a center for asylum seekers (AZC) throughout the country, where they must stay until a decision is made on their claim. If the AZCs are full, asylum seekers may stay elsewhere, but are required to report regularly to an AZC.⁷⁹⁰

Rejected asylum seekers awaiting deportation are also detained provided removal is possible and documentation has been required. Such detention, however, must not exceed a month.⁷⁹¹

Asylum seekers are provided accommodation initially in screening and reception centers, and then in either residence centers or other facilities, depending on availability.⁷⁹² Asylum seekers not staying in state-run centers must report regularly to the centers.⁷⁹³ Financial assistance and medical care are provided to asylum seekers, and some center provide cooking facilities. Single men and women are housed separately in state-run centers.⁷⁹⁴

The Aliens Act 2000 also introduced a decision moratorium, which can be applied to freeze decision-making for claims of asylum seekers from particular geographical regions. This means that the Secretary of State has the right not to decide on these cases during that year. On December 14, 2001, a moratorium was implemented for asylum seekers from Afghanistan because of their unclear situation after September 11. The moratorium, which was originally implemented for three months, has now been extended to September 15, 2002.⁷⁹⁵

Is there independent review of the detention decision? Yes.

There is an automatic review of detention within 10 days by the District Court.⁷⁹⁶ If an asylum seeker is deemed inadmissible, she may appeal the negative admissibility decision to the District Court which also reviews the lawfulness of detention. This appeal must be made within 24 hours.⁷⁹⁷

In addition, the court is notified of any detention of a rejected asylum seeker for over four weeks that has not been appealed. If deportation is still impossible, through no fault of the alien, the asylum seeker will be released.⁷⁹⁸

Are there limits on the period of detention? Yes; four weeks to eleven months.

If an asylum seeker has been rejected for the accelerated procedure, and has been detained for four weeks pending removal without lodging an appeal against the rejection, the District Court is notified. If deportation is not possible, the detainee will likely be released.⁷⁹⁹

In practice, depending on the availability of travel documents and the appeals lodged, an asylum seeker may be detained for as long as eleven months pending deportation.

Is there periodic review of detention? No.

There is an automatic review within ten days; further reviews are initiated by the asylum seeker by appeal to the District Court.⁸⁰⁰

Is there access to government-funded legal aid? Yes.

Asylum applicants under the accelerated procedure receive legal aid appointed from the private bar or the Foundation for Legal Aid in Asylum Cases, which is state-funded.⁸⁰¹ An asylum applicant in the normal procedure may also have a lawyer or a representative from the Dutch Refugee Council be present at the asylum interview with the IND.⁸⁰² Asylum seekers appealing negative decisions are appointed state-funded counsel.⁸⁰³

Vulnerable groups: In 2001, 17% of asylum seekers were unaccompanied minors.⁸⁰⁴ Unaccompanied minors under 12 are appointed a guardian to file an asylum application on the minor's behalf. Representatives from the Dutch Refugee Council also usually assist and accompany minors at their asylum interview. In some cases, when a case requires legal representation, the Foundation for Legal Assistance appoints a lawyer to represent the child.⁸⁰⁵ Efforts are made to house unaccompanied minors in special facilities.⁸⁰⁶ Unaccompanied minors under 15 are accommodated, when feasible, in special centers run by the *Valentijn* Foundation, where the Dutch Refugee Council has an office.

In May 2001, the government announced a more restrictive policy towards unaccompanied minors in response to an increase in the number of minor asylum seekers coming to the Netherlands in recent years.⁸⁰⁷ Unaccompanied minors whose asylum claims are rejected are granted a revocable residence permit, which is valid for three years. During these three years, the Ministry of Justice examines the family and guardianship situation in the country of origin. If the minor turns 18 before the three-year period has expired, he must return to his country of origin.⁸⁰⁸ When they are in the

Netherlands, unaccompanied minors are under guardianship of the institution called “De Opbouw,” which is responsible for supervision of these youngsters.⁸⁰⁹

NEW ZEALAND

New Zealand is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. New Zealand’s refugee determination system operated on an extra-statutory basis until 1999, when the Immigration Amendment Act of that year inserted a new section, Part VIA, into the 1987 Immigration Act.⁸¹⁰

New Zealand’s two-tiered asylum system received 1,523 applications in 2000, 1,791 applications in 2001, and 489 in the first half of 2002.⁸¹¹ Officers of the Refugee Status Branch (RSB), who are charged with making first-instance decisions,⁸¹² adjudicated 2,495 claims during the year, granting 467 and denying 2,028.⁸¹³ 1,424 claims were pending first-instance decisions at the end of the year.⁸¹⁴ The Refugee Status Appeals Authority (RSAA), an independent body staffed by a number of practicing or recently retired lawyers drawn from outside Government and one ex officio representative of the UNHCR,⁸¹⁵ decided 944 appeals, granting 40 and denying 904.⁸¹⁶ The jurisdiction of the Authority is strictly confined to the determination of refugee issues and it is precluded from making any immigration decisions including whether successful refugee claimants should be granted residence permits.⁸¹⁷ In the first quarter of 2002, 250 applications were filed.⁸¹⁸

Judicial review of decisions of the RSAA is available, but it must be commenced within three months, unless the High Court decides that, by reason of special circumstances, further time should be allowed.⁸¹⁹ In practice, few decisions of the RSAA reach the High Court on judicial review, and even fewer still the Court of Appeal. Furthermore, only a small proportion of these cases have raised issues of substantive refugee law.⁸²⁰

Decisions as to whether to issue undocumented immigrants, including asylum seekers, “permits” (visas) to remain in the country pending the determination of their immigration or asylum status claims, are made at the discretion of New Zealand Immigration Service (NZIS) officers.⁸²¹ The Immigration Act does not specifically provide for the detention of asylum seekers. However, Section 128B of the Immigration Act allows the NZIS and police to detain individuals at the border if their eligibility for a permit is not immediately ascertainable or there are “reasonable grounds for believing” that they constitute a genuine risk to national security or public order (because they have committed serious crimes, are involved in terrorism or organizations with criminal objectives, or are likely to commit serious crimes, acts of terrorism or drug offenses).⁸²² Section 128(5), by contrast, grants the NZIS and police the power to detain individuals who have been refused permits to remain in the country pending the determination of their immigration

or asylum status claims pending their “departure from New Zealand on the first available craft.”⁸²³

Prior to September 19, 2001, only 5% of refugee claimants were detained and of those all were deemed to be flight or security risks under §128B.⁸²⁴ However, on that date, amid security concerns following the attack on the US and as 131 people rescued off Australia from the Tampa were on their way to New Zealand, the NZIS issued a new Operational Instruction to its officers regarding the interpretation of policy and the exercise of discretion pursuant to §128(5) of the Immigration Act.⁸²⁵ The Operational Instruction directed immigration officers, “in deciding whether or not in a particular case detention [of a refugee status claimant] is justified, and the type of detention justified”, to be guided by various factors stated under two specific headings.⁸²⁶

Under the first heading, a warrant of commitment in a penal institution may be justified: where an asylum seeker is or is suspected to be a person to whom one of the disqualifications listed in section 7(1) of the Act applies;⁸²⁷ to protect national security or public order; while the identity of an asylum seeker is verified; or where an asylum seeker has destroyed or otherwise disposed of their travel or identity documents with the intention of misleading NZIS officials. Under the second heading, a warrant of commitment for residence at the Mangere Accommodation Centre may be justified: where the identity of an asylum seeker cannot be ascertained to the satisfaction of the NZIS but there do not appear particular reasons for detaining her in a penal institution or releasing her; where an asylum seeker is in poor health; where an asylum seeker has arrived as part of a group of 10 or more; where a preliminary assessment suggests that the merits of the asylum seeker’s claim are not strong; or where an asylum seeker has no valid travel and/or identity document and there may be delay or difficulty in obtaining them in the event that the claim is declined.⁸²⁸ According to the Instruction, “[t]he detention of persons at the border who claim refugee status but are not granted a permit is not limited to the specific circumstances outlined; ...[a]ll cases depend upon an individual assessment of their circumstances.”⁸²⁹

As a result of the instruction, 94% of the asylum seekers who entered the country after it went into effect were reportedly detained.⁸³⁰ Between September 19, 2001 and January 31, 2002, 208 out of 221 individuals who sought asylum were held, either in Auckland Central Remand Prison (ACRP) or in the Mangere Reception Centre (MRC), pursuant to §128(5) and the Operational Instruction.⁸³¹ By mid-April, 2002, over 100 people were detained, 25 in ACRP and 101 at MRRC.⁸³²

In December 2001, the Refugee Council of New Zealand and the Human Rights Foundation challenged the Operational Instruction in the High Court on behalf of all refugee claimants and an unnamed individual plaintiff arrested and detained as a consequence of it. The individual plaintiff claimed damages in the amount of NZ\$150,000.⁸³³ The plaintiffs’ first claim was that §128(5) constituted an inappropriate

section of the Immigration Act under which to detain asylum seekers, given that it granted the NZIS “quick turnaround” power, for the purpose of ensuring that illegal entrants were held pending their departure “on the first available craft”.⁸³⁴ This power, they argued, was not appropriate for the detention of asylum seekers who, in light of the principal of *non-refoulement*, would clearly not be departing on the first available craft.⁸³⁵ Their second claim was that detentions of asylum seekers resulting from the Operational Instruction constituted violations of the New Zealand Bill of Rights Act and the Refugee Convention, and were contrary to UNHCR Guidelines for the Detention of Refugees, UNHCR Executive Committee Conclusion 44, and the part of the NZIS Operational Manual that deals with the detention of refugee status claimants.⁸³⁶

On June 27, 2002, High Court Justice David Baragwanath ruled that the Operational Instruction and the resulting practice of detaining almost all asylum seekers was unlawful on the grounds alleged in the plaintiffs’ second claim.⁸³⁷ In ruling it unlawful, he said that it breached Article 31.2 of the Refugee Convention, which requires that restrictions on movement be no more than “necessary”.⁸³⁸ He found that “[n]ecessary” in this context means the minimum required...to allow the Refugee Status Branch to be able to perform its functions, to avoid real risk of criminal offending, [or] to avoid real risk of absconding.”⁸³⁹

Having found the Operational Instruction to be “fundamentally defective”, Justice Baragwanath opened the door for those who were affected by it to make individual claims for compensation and for the next stage of the unnamed plaintiff’s \$150,000 claim.⁸⁴⁰ The ruling could affect as many as 350 asylum seekers and cost the government millions of New Zealand dollars.⁸⁴¹ The Minister of Immigration was reported as saying that she believes the finding was based on too narrow an interpretation of the Refugee Convention.⁸⁴² The Crown is appealing the decision in the New Zealand Court of Appeal and is likely to apply for a stay pending that appeal.⁸⁴³ According to the New Zealand press, the government continues to detain almost all asylum seekers initially, despite Justice Baragwanath’s ruling.⁸⁴⁴

While the case was pending, on June 12, 2002, the New Zealand Parliament passed a Transnational Organized Crime Bill that amended the Immigration Act to allow detained asylum seekers conditional release pending the adjudication of their claims (see *Alternatives to detention* below).⁸⁴⁵ This relaxation of the restrictions on detained asylum seekers was in response to a May 31, 2002, interim ruling by Justice Baragwanath, in which he found that all refugee claimants detained under the challenged Operational Instruction were entitled to apply for bail,⁸⁴⁶ and to arguments made by the Refugee Council of New Zealand before Parliament on the subject.⁸⁴⁷

On July 17, 2002, the UN Human Rights Committee criticized New Zealand for its detention and treatment of asylum seekers since the 2001 terrorist attacks in the United States.⁸⁴⁸ It noted that the post-September 11 policy may have been introduced without

New Zealand fully considering its obligations under the ICCPR.⁸⁴⁹ Told that the Government had since amended its policy to comply with the High Court ruling (it is not known whether it was told that the Government is appealing), the Committee said it remained concerned about the possible impact of the punishment of preventive detention and would continue to monitor the issue in New Zealand.⁸⁵⁰

Is there independent review of the detention decision? Limited.

The initial decision whether to detain asylum seekers is made administratively and on a discretionarily basis by NZIS officers.⁸⁵¹ Section 128 of the Immigration Act provides that persons detained because they have been refused permits may be detained for 28 days, pending their removal to whence they came.⁸⁵² Section 128B, by contrast, provides that persons whose eligibility for a permit is not immediately ascertainable or are suspected of being ineligible for a permit because they pose a risk to security or public order may be detained while it is determined whether or not they are in fact ineligible for a permit.⁸⁵³

Recognizing that the application of §128 to asylum seekers is awkward, as determination of their claims generally takes longer than 28 days, in 1991 the Court of Appeal recommended that specific legislative provision be made for the detention of refugee claimants.⁸⁵⁴ However, when Parliament amended §128 in 1999, it chose to work within the existing statutory framework, which made no distinction between asylum seekers and other immigrants.⁸⁵⁵ Previously, if detainees held under §128 had not already been released or removed from the country, or it appeared unlikely that they would be removed within the 28 day period, release was mandatory.⁸⁵⁶ Similarly, once it was determined that detainees held under §128B did not threaten security or public order, they were granted temporary permits and immediately released.⁸⁵⁷

The 1999 Amendment Act, however, provided that warrants of commitment issued under §128 could be extended by a District Court Judge for an unlimited number of seven-day periods in the case of individual applicants or for as long as a District Court Judge found necessary in the case of mass arrivals.⁸⁵⁸ It also provided that once it was determined that a person detained under §128B did not threaten security or public order, an immediate decision must be made whether or not to grant a permit. If a permit was granted, the person was released. If a permit was not granted, the person became subject to detention under §128, which might be extended until they were removed from New Zealand.⁸⁵⁹

Although, under the 1999 Amendment, a judge decided every seven days whether an individual applicant was still a person to whom §128 applied, unless the NZIS had issued the applicant a permit, the judge was obligated to extend the person's warrant of commitment.⁸⁶⁰ Thus, in effect, there was no judicial input into detention, unless a case was brought to the High Court by an application for habeas corpus or judicial review, and bail could not be granted.⁸⁶¹ As discussed above, however, on May 31, 2002, the High

Court ruled that people claiming asylum must be permitted to apply to a District Court Judge for bail and on June 12, 2002, Parliament amended the Immigration Act to allow detained asylum seekers conditional release pending the adjudication of their claims.⁸⁶² The release on conditions of a person detained under section 128 of the Immigration Act is now a matter for the Judge to decide, taking into account all the circumstances of the case⁸⁶³ (see below *Alternatives to detention*).

All detention decisions may be subject to judicial review in the High Court at any time at the initiative of the claimant.⁸⁶⁴ However, as there is no legal aid available for judicial review or habeas corpus proceedings for asylum seekers, few asylum seekers are able to challenge their detention before the High Court (see below *Is there access to government-funded legal aid?*).

Are there limits on the period of detention? No.

As noted above, the 1999 Amendments to the Immigration Act made it possible to prolong detention for the entire status determination process and potentially indefinitely.⁸⁶⁵ Domestic and international NGOs have been highly critical of the absence of a time limit in the Immigration Act, particularly in the case of mass arrivals, whose detention does not need to be assessed at seven day intervals, as in the case of individual applicants. According to the Immigration Minister herself:

UNHCR has ... noted, with a degree of regret, the provision allowing continued detention in situations where a mass arrival potentially of a group of asylum seekers has occurred. The current draft does not seem to specify any time limits to the period of detention, nor does it contain specific provisions to ensure an expeditious but fair processing of those persons who indeed apply for refugee status in New Zealand...[D]etention of asylum seekers is considered inherently undesirable, but if exceptionally resorted to, it is to be clearly prescribed by law.⁸⁶⁶

Although the 2002 Amendment contained in the Transnational Organized Crime Bill provided for conditional release of asylum seekers, it did not place a time limit on the detention of those who are denied release.

Is there periodic review of detention? Limited.

As noted above, after 28 days in detention, individuals must be brought before a District Court Judge every seven days for a determination of whether they are still subject to ¶128 of the Immigration Act. After 28 days in detention, members of a group that arrived together also must be brought before a District Court Judge; however, their detention does not need to be reviewed every seven days thereafter. As noted above, this periodic review is ineffective, given that the judge does not have discretion to release an asylum

seeker who has not been granted a permit. However, as of May 31, 2002, all asylum seekers may be granted conditional release from detention by a District Court Judge on the application of an immigration officer or the claimant at any time (see below *Alternatives to Detention*).

Is there access to government-funded legal aid? Limited.

Refugee status claimants have the right to be represented in the initial stages of the refugee status process and in detention matters.⁸⁶⁷ There is no legal aid available for judicial review or habeas corpus proceedings for detention of refugees, however.⁸⁶⁸ According to the Human Rights Foundation of Aotearoa and the Refugee Council of New Zealand, this makes it simply unfeasible for refugee claimants to take proceedings to the High Court to challenge detention or permit decisions.⁸⁶⁹

Government-funded legal aid for representation must be applied for and is means-tested.⁸⁷⁰ The NZIS provides asylum seekers upon their arrival a list of lawyers to contact and indicates the Legal Services Agency will appoint them a lawyer if they choose not to hire one themselves.⁸⁷¹ Upon their arrival to the MRRC, asylum seekers are given an information pack, which includes information about their rights.⁸⁷² However, NGOs are concerned and officials admit, that there are often long delays before claimants receive government-funded legal aid.⁸⁷³ Concerns have also been raised about the experience and qualifications of the lawyers on the list provided by the NZIS. In February 2002, the Auckland District Law Society suggested that an accreditation scheme be established for refugee lawyers, but action has yet to be taken on this initiative.⁸⁷⁴ Asylum seekers' access to their attorneys is limited by the small number of phones and fax machines, as well as the prohibition on making calls to cell phones in the ACRP and MRRC.⁸⁷⁵

Alternatives to detention: Yes.

As noted above, the option of conditional release was established by the Immigration Amendment Act 2002 in June 2002. Asylum applicants may apply at any time to the District Court to be released on conditions. A conditional release order may specify any conditions that the judge thinks fit to impose and must specify: (a) a date or occurrence when it expires; (b) the location to which the person must report when it expires; (c) where the person must reside; (d) reporting requirements, to the Police or NZIS; and (e) required attendance at refugee status interviews.⁸⁷⁶

A breach of conditions permits the police to make a warrantless arrest and a District Court Judge to reconsider the conditional release.⁸⁷⁷ The NZIS may apply to a District Court Judge for the cancellation of conditional release in the event that further information comes to light or circumstances change so that conditional release of a

claimant is no longer deemed appropriate.⁸⁷⁸ The District Court Judge has the discretion as to whether to grant the application.⁸⁷⁹

There is no general requirement that asylum seekers on conditional release reside at a particular place; however, the Auckland Refugee Council's Grove Hostel is one possibility.⁸⁸⁰ The only restrictions on freedom of movement are the reporting requirements imposed by the District Court judge.⁸⁸¹ Asylum seekers released on conditions are not lawfully able to work.⁸⁸²

Vulnerable groups: No special treatment.

According to the Minister of Immigration:

The detention of all refugee status claimants is a matter that is determined on a case by case basis having regard to all of the circumstances of their case. The degree of vulnerability of a claimant (determined by age, sex, medical conditions or history of trauma) is a factor in every case in deciding whether detention is justified. If detention is, nonetheless justified, it is also a factor in deciding whether detention should occur in a penal institution or a more open, low security environment where such persons may be granted leave.⁸⁸³

Persons under the age of 18, pregnant women, and elderly, handicapped and mentally ill persons have all reportedly been detained since September 2001 with no special treatment.⁸⁸⁴

The Minister of Immigration is reportedly aware that children should not be detained.⁸⁸⁵ The NZIS has developed a set of Guidelines of the Treatment of Unaccompanied Children, and has reportedly endeavored to abide by the Statement of Good Practice set out by the Save the Children and UNHCR *Separated Children in Europe Programme*.⁸⁸⁶ Nonetheless, two boys of 16 and 17 from the *Tampa* were initially detained at ACRP. Apparently, no reasons for their detention were given and no effort was made to find other facilities to accommodate them.⁸⁸⁷ They were released following the intervention of several NGOs, lawyers and government Ministers.⁸⁸⁸ Upon their release they joined other children from the *Tampa* in a group home.⁸⁸⁹ Only two of the children who were on the *Tampa* have been assigned individual guardians; although, the Children Youth and Families Service (CYFS) has invested heavily in the care of all of the children.⁸⁹⁰ Children who arrived on the *Tampa* were promptly enrolled in school, which was reportedly not the case for some children who arrived since September 2001.⁸⁹¹

Children under the age of 17 are not eligible to sponsor their immediate family members for residence under the Family Sponsored Stream, a problem that has become particularly acute due to the large number of unaccompanied minors who arrived on the *Tampa*.⁸⁹² In

May 2002, the NZIS was reviewing this problem for the purpose of making recommendations to the Immigration Minister.⁸⁹³

New Zealand officials reportedly agree that it is inappropriate to detain pregnant women and newborn babies.⁸⁹⁴ Nevertheless, several pregnant women have been detained at MRRC. In December a baby was born there; although soon after her birth she was moved to the ARC Hostel. Prior to seeing a doctor upon her arrival to MRRC, a pregnant woman with diabetes was detained at the airport for a long period. As recently as May, 2002, a woman was in detention who was 9 months pregnant.⁸⁹⁵

At least one unaccompanied elderly man over 60 and one wheelchair bound individual has been detained at MRRC since September 2001, according to Human Rights Foundation of Aotearoa and the Refugee Council of New Zealand.⁸⁹⁶ NGO visitors to ACRP and MRRC report with concern detainees exhibiting many symptoms of trauma: nervousness, anxiety, aggressive attitudes, muteness, distrust and withdrawal.⁸⁹⁷ The Refugees as Survivors Centre does not have sufficient funding to care for detained asylum seekers and the availability of mental health care inside the detention centers is difficult to evaluate.⁸⁹⁸

NICARAGUA⁸⁹⁹

Nicaragua acceded to the 1951 UN Refugee Convention and the 1967 Protocol in 1980, and is a state party to the International Covenant on Civil and Political Rights and its First Optional Protocol as well. The Immigration Detention Center in Managua has a maximum capacity of 28 people, but is almost always over-full. According to UNHCR Statistic Fact Sheets 1998 and 1999, the UNHCR processed 12 cases refugee cases in 1998 and 22 in 1999. Overall, the UNHCR estimates that there were 470 refugees in each of these years.⁹⁰⁰

All migrants who are stopped at the Nicaraguan border without documentation are detained. Generally, the goal of detention is eventual deportation, unless the asylum seeker shows that they have a fear of persecution in their country, in which case a formal petition for refugee status can be lodged at the Immigration Detention Center in Managua. In cases where asylum seekers make it to Managua without being caught at the border, they can go to the UNHCR office in Managua and make an asylum claim directly and the UNHCR makes the determination without detaining the claimants. National Police and Immigration Officials have the power to detain, but in practice this power is exercised by the police.

Is there independent review of the detention decision? No.

When arrested outside of Managua, migrants are detained for about 10 days in jails closest to their point of entry into Nicaragua. Within 72 hours of the arrest, the police

must present the case to a judge. Article 32 of the *Law For the Control of Trafficking of Illegal Migrants* states that the National Police, through a chief investigator, must present a judge with evidence relating to illegal trafficking, in order to make the appropriate criminal charge. The judge then has 10 days to give her interlocutory sentence. Following this sentence, the detained is transferred to the Immigration Detention Center in Managua where they await deportation or make their refugee claim. At this point, the case is picked up by a judge at the Detention Center. Detainees without documentation or otherwise illegally in the country can be detained for up to three months. There is no access to bail. In cases where the appropriate arrangements are made, the detainee can be deported to their home country prior to the end of the three month period.

Are there limits on the period of detention? Yes; 3 months.

The maximum time of detention is three months, at which point detainees are either deported or are giving refugee status, if applicable.

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

Detainees are allowed to retain a lawyer, but legal representation is not funded by the government. As a general rule, they should be told about their rights and their legal status during their detention. Information given includes lists of lawyers and contacts with NGOs and other relevant organization.

In Nicaragua, as a requirement of being able to practice law, all lawyers must be available to defend people who do not have lawyers. One NGO explained that while in theory this is an excellent system, in practice people are given lawyers who are not trained in the legal area, and who are not interested in the area or the case, and thus only do the minimum work required to fulfill their obligation.

Alternatives to detention:

In some cases, custody of refugee claimants can be given to community and religious organizations who agree to shelter and feed the refugee claimants during their asylum process.

Vulnerable groups: Minors are also held in detention, although there are few cases of minors being detained. When minors are alone they are put under the custody of the Department of Family Services. Alternately, when they are with family members, they stay in the Detention Center, and the cell door is left open so that they can move around a little more.

NORWAY

Norway is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. During 2000, 10,842 applications for asylum were filed; at the end of the year, there were 2,700 applications pending decision.⁹⁰¹ During 2001, 14,782 asylum applications were filed; at the end of the year, there were approximately 7,560 asylum claims pending decision.⁹⁰² In the first quarter of 2002, 4,375 applications were filed.⁹⁰³

Section 37 (6) of the Aliens Act provides that asylum seekers may be detained at the border in an immigration detention center or regular prisons by police if, upon arrival, their identity cannot be established.⁹⁰⁴ In practice, such detention is rare. During 2000, 7 people were detained on such grounds, and during 2001, 47 people were so detained. It is also rare that rejected asylum seekers are detained. There is a small detention center at Gardermoen airport for detention of people being deported. If such detention is to last more than one night, the detainee is housed in an ordinary prison. In February 2002, the Norwegian government reported that, ideally, detainees are held separately from the general prison population.⁹⁰⁵ During 2000, 77 of 2,186 people deported were detained in pre-deportation detention (49 of these were asylum seekers), and during 2001, 56 of 5,161 people deported were so detained (15 were asylum seekers). Reporting requirements, surrender of passport or travel documents, or directed residence may be used as alternatives to detention.⁹⁰⁶

The Norwegian government reported, in early 2002, that asylum seekers stay at open reception centers during the asylum procedure, although those asylum seekers who wish to are allowed to stay with relatives or others during the initial phase, provided they report for required appointments with authorities. Residents at the reception centers are free to come and go during the day, but other absences from the centers must be approved. As of late 2001, asylum seekers who choose not to stay in a reception center will not be eligible to receive financial assistance from the government.⁹⁰⁷

The European Council on Refugees and Exiles reported that during 2001, the Directorate of Immigration began formulating a new structure for handling asylum applications, whereby asylum seekers whose cases were expected to result in negative decisions are to be housed in separate reception centers and, if rejected, transferred to a transit center to await return.⁹⁰⁸

Is there independent review of the detention decision? Yes.

The Norwegian government reports that the decision to detain an asylum seekers can be extended only by a court, and is reviewed every two weeks.⁹⁰⁹ The initial decision is

reviewed as soon as practicable after the detention, ideally the day following the detention.⁹¹⁰

Are there limits on the period of detention? Yes; twelve weeks.

A 2001 report indicates that detention of asylum applicants detained for identification purposes typically may not exceed 12 weeks, barring exceptional circumstances.⁹¹¹ Detention of rejected asylum seekers prior to deportation is limited to a maximum of six weeks, according to a 2000 report, consisting of three renewable two-weeks periods.⁹¹²

Is there periodic review of detention? Yes; automatic.

For asylum seekers in the initial stages of application, the decision to detain is reviewed by a court every two weeks. The decision to renew or extend detention is made only by the Court.⁹¹³ For rejected asylum seekers, detention is reviewed every two weeks by a court. In periodic detention review hearings, the detainee will often be appointed a lawyer by the court,⁹¹⁴ although the lawyer's expertise in asylum law may be limited.⁹¹⁵

Is there access to government-funded legal aid? Limited.

As of late 2001, asylum seekers are allotted five hours of free, state-funded legal aid for initial applications, and three additional hours during the appeals process (plus another 5 hours if the case is to be presented before the Immigration Appeals Board). Legal aid is funded by the government.⁹¹⁶ As noted above, in periodic detention review hearings, the detainee will often be appointed a lawyer by the court,⁹¹⁷ although the lawyer's expertise in asylum law may be limited.⁹¹⁸

Alternatives to detention: Directed residence; reporting requirements; surrender of passport or travel documents.

Vulnerable groups: Unaccompanied minors are housed in special departments in the reception centers, and efforts are made to expedite the processing of their applications.⁹¹⁹ They may, however, in rare instances be subject to brief detention after a negative decision to ensure removal.⁹²⁰ According to a 2001 report, within one week of arriving in Norway, unaccompanied minors are appointed legal guardians by the Public Trustees Office. The guardians' responsibilities include looking after the children's best interests, contacting the relevant legal authorities, being present during the asylum interview and helping the children settle in their new environment.⁹²¹

There are special areas for female asylum seekers at the main transit reception center, and at several other centers.⁹²²

PAKISTAN

Pakistan is not a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, or to the International Covenant on Civil and Political Rights, or its First or Second Optional Protocols. At the end of 2001, Pakistan hosted more than 2.2 million refugees, the majority of whom were from Afghanistan.⁹²³ After decades of hosting more refugees than any other country in the world, Pakistan has taken an extremely tough stance against refugees. Pakistan's shift in refugee policy occurred even before the events of September 11, 2001. The steadily increasing influx of Afghan refugees, combined with decreased international donor support and the country's economic problems, fueled anti-refugee sentiments in Pakistan's refugee-concentrated regions and its government.⁹²⁴

Pakistan officially closed its border with Afghanistan in November 2000, citing an inability to take in the thousands of continually arriving refugees.⁹²⁵ Prior to that time, Afghans were considered as *prima facie* refugees.⁹²⁶ In January 2001, the governor of Pakistan's North West Frontier Province (NWFP), where most refugees arrive, issued public orders empowering the police to detain and deport newly arrived Afghans in the NWFP and all undocumented Afghans already within the borders. These orders were subsequently issued by the federal government as well.⁹²⁷ In July 2001, Pakistani authorities and UNHCR began a screening program for new arrivals at camps located in Jalozi and on the outskirts of Peshawar. Under the terms of the agreement, Pakistan would permit those who are screened in to remain temporarily, but deport to Afghanistan those who are screened out.⁹²⁸

Pakistan has no specific refugee law. Many of the existing laws actually undermine the right to asylum. The Foreigners Order of October 1951 gives the power to grant entry to Pakistan to civil authorities at the border. Under the Foreigners Order, foreigners who are not in possession of proper identity documents can be refused leave to enter.⁹²⁹

The majority of Afghan refugees in Pakistan are undocumented. Because they lack legal status, they are at risk of being harassed and detained by the Pakistani police. In a 2002 report, Human Rights Watch provided various accounts of mistreatment of Afghans by the police, including detention for the purpose of extorting money from the detainee's family. Afghans are also detained under the Foreigners Order, which allows for the "arrest of any foreigner without warrant."⁹³⁰ Even before Pakistan closed its borders in November 2000, Pakistani authorities had embarked on a campaign of harassment against Afghan refugees. In the cities, police had increased the frequency of extortion, detention and refoulement.⁹³¹ After the NWFP decree in early 2001, the authorities rounded up, detained and forcibly returned thousands of Afghans. Detainees were not given the opportunity to notify their families. According to a 2001 UN-commissioned study, the government's public endorsement of mass detention increased police corruption.⁹³²

The mass detention/deportation policy has created an environment of fear and anxiety. Those who cannot pay the bribes of the policy, often very high amounts, are officially charged as aliens under the Foreigners Act. Under the new policy, stopping Afghans on the street has reportedly become a regular practice. One refugee interviewed by USCR reportedly spent three months in prison before his family raised the 30,000 rupees (\$480) in bribes and attorney's fees in order to effectuate his releases. He told USCR that there were as many as 500 Afghans in detention at the prison on any given day.⁹³³

Is there independent review of the detention decision? No.

Section 15 of the Foreigners Order requires that the reasons for the proscribed detention be forwarded to the federal government. According to the 2002 Human Rights Watch report, however, Afghan and Pakistani NGOs report that this procedural requirement is rarely met.

Are there limits on the period of detention? None discovered in research.

Is there periodic review of detention? None discovered in research.

Is there access to government-funded legal aid? None discovered in research.

PAPUA NEW GUINEA

While Papua New Guinea is a signatory to the Refugee Convention, it has placed significant reservations on its signature and does not accept the obligations contained in the Convention with regard to provision of education and housing for refugees, or expulsion and naturalization.⁹³⁴ It is not a party to the ICCPR or its First Optional Protocol. It has not established a formal refugee protection framework.

Papua New Guinea (PNG) hosted nearly 5,400 refugees and asylum seekers at the end of 2001.⁹³⁵ Of those, 5,154 were Indonesian refugees from Irian Jaya, an Indonesian province that shares the island of New Guinea with Papua New Guinea.⁹³⁶ The other 216 were primarily Iraqi asylum seekers who had attempted to land on Australian territory by boat.⁹³⁷ Australia transferred them to Papua New Guinea in October as part of Australia's "Pacific Solution" for unauthorized boat arrivals" (see chapter on Australia above).

Contrary to UNHCR's practice in other countries that have signed the UN Refugee Convention but have no system for assessing refugee claims, the refugee agency has refused to process the claims of asylum seekers in Papua New Guinea.⁹³⁸ Therefore, the asylum claims of those held in Papua New Guinea as part of Australia's Pacific Solution are currently being processed by Australian immigration officials hired in their personal capacities for that purpose by the International Organization on Migration (IOM).⁹³⁹

The Australian government paid for the construction of a detention center for asylum seekers on Manus Island in Papua New Guinea, which opened in October 2001.⁹⁴⁰ Currently there is no UNHCR office in Papua New Guinea, which is covered by the office in Canberra, Australia; although the organization is planning to reopen its office in Port Moresby, Papua New Guinea, in 2002. In the meantime, there is no ongoing independent monitoring of asylum seekers held in Papua New Guinea, asylum seekers there reportedly have no habeas corpus or other rights with which to challenge their potentially indefinite detentions, and asylum seekers have no access to legal representation.⁹⁴¹ Groups such as Amnesty International have called the Pacific Solution in Papua New Guinea unsustainable.⁹⁴²

Papua New Guinea is a party to the United Nations Convention on the Rights of the Child. In May 2002, there were 125 children detained on Manus Island in Papua New Guinea.⁹⁴³

POLAND

Poland is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Some 4,519 asylum seekers applied for asylum in 2000, and at the end of the year, decisions were pending on 1,095 applications.⁹⁴⁴ Some 4,506 asylum applications were lodged in 2001, and there were an estimated 1,500 asylum decisions pending at year's end.⁹⁴⁵ In the first quarter of 2002, 868 applications were filed.⁹⁴⁶ No information was available on the number of asylum seekers detained.

According to 1999 and 2001 reports, border applicants are required to remain at the border for up to seven days while border police undertake identification procedures. Additionally, rejected asylum seekers may be detained for up to 90 days to ensure removal.⁹⁴⁷

According to a 2002 report, asylum seekers are usually housed in one of several government-run refugee centers,⁹⁴⁸ where families are separated, to the extent possible, and single women with young children are accommodated separately from men. Cooking facilities are available in some instances. Permission to leave the centers for up to 72 hours may be given. Financial assistance and medical care are generally available only to those housed in the centers.⁹⁴⁹ Asylum seekers are eligible to live in the refugee centers for up to 14 days following a negative first instance decision. If they appeal such decision, however, they have the right to remain in the center until the 2nd instance decision is issued. Following a second instance decision, asylum seekers may remain in the center for up to 14 days, with the possibility of extension to up to 3 months in exceptional circumstances.⁹⁵⁰

Is there independent review of the detention decision? Yes.

Other than in the case of asylum seekers required to remain at the border during identification procedures, above, the decision to detain is made by a local court and may be appealed to the district court within seven days of the date of issuance of the decision.⁹⁵¹ The district court's decision is final. The Aliens Act provides for government compensation for foreign nationals who have been wrongfully detained.⁹⁵²

Are there limits on the period of detention? Yes; seven to ninety days.

Detention at the border while awaiting identification is limited to seven days.⁹⁵³

Detention of asylum seekers awaiting deportation is limited to ninety days, according to a 2001 report. If an asylum seeker is not removed within that period, or if the reasons for detention no longer obtain, she must be released.⁹⁵⁴

Is there periodic review of detention? No.

There appears to be no automatic review of detention outside of the asylum seeker's right to appeal.

Is there access to government-funded legal aid? Limited.

Legal representation is not compulsory. The applicant must pay a court fee, which may be waived by the court. The court may also grant legal aid, though this is not well-established practice.⁹⁵⁵

NGOs have taken a more active role to ensure access to the refugee status procedure. The Helsinki Foundation for Human Rights, UNHCR, the Human Rights Center of the Jagiellonian University Legal Clinic, and Caritas have established legal assistance programs for asylum seekers and refugees.⁹⁵⁶

Alternatives to detention:

The Aliens Act provides certain exceptions to detention, stating that an alien should not be detained if it may cause a serious threat to life or serious consequences for the alien's family. Additionally, an alien may be housed in a medical facility if the state of the alien's health so requires.⁹⁵⁷

Vulnerable groups: Unaccompanied minors are appointed a guardian to represent them in the asylum procedure, though the appointment procedure is reported to be lengthy.⁹⁵⁸ In practice, the guardian does not have to maintain personal contact with the child, and the appointment is regarded as legitimizing the refugee status procedures or deportation proceedings.⁹⁵⁹ According to a 1999 report, those under 13 are housed in special facilities, and those over 13 in the refugee centers, where special services are provided to them.⁹⁶⁰ The European Council on Refugees and Exiles reported that in 2001, all

unaccompanied minors were housed in a separate section of a central reception center, and permitted to leave during the day but not allowed longer absences without being accompanied by a legal guardian.⁹⁶¹

PORTUGAL

Portugal is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. Asylum seekers filed some 224 applications for asylum during 2000, and 11 applications had not yet been decided at the end of the year.⁹⁶² In 2001, some 234 (including 41 family members) asylum applications were lodged.⁹⁶³ In the first quarter of 2002, 54 applications were filed.⁹⁶⁴ No information was available on the number of asylum seekers detained.

According to the Portuguese Refugee Council (PRC), the only detention-like situation arises under the special regime of asylum requests made at the borders.⁹⁶⁵ The Aliens and Border Service, under the Ministry of Home Affairs, has the authority to detain asylum seekers arriving at ports of entry. Asylum seekers arriving at the Lisbon airport are detained in the transit zone for 48 hours to five days while an initial decision is made on admissibility. If a decision on admissibility is not made within five days, asylum seekers held at the airport must be released and allowed to enter the territory.⁹⁶⁶

According to a 2001 report, some asylum seekers arriving at the border are not allowed immediately to file asylum applications, which delay may extend the length of their detention.⁹⁶⁷ Arrangements made to accommodate asylum seekers at the airport have been improved with the opening in July 2000 of a Lodging Centre for Asylum Seekers: among other improvements, there is now the availability of legal advice provided by the PRC. Asylum seekers are not typically detained during the asylum determination process.⁹⁶⁸ The Asylum Act, as of 2001, provides for suspension of criminal or administrative procedures based on illegal entry when the person subject to such proceedings files an application for asylum.⁹⁶⁹

Asylum seekers may be housed at a single reception center run by the PRC, at which they may stay for a maximum of two months.⁹⁷⁰ Priority is given to members of vulnerable groups. After leaving the reception center, asylum seekers find their own accommodations, often in hostels. Financial assistance is generally provided by the state only to asylum seekers admitted to the normal determination procedure, and only for four months.⁹⁷¹ The PRC also provides emergency social assistance, including clothing, bus tickets and a stipend for food, usually until a first instance decision is given. Asylum seekers receive medical care through the national health service, funded partly by the PRC and partly by the state.

Is there independent review of the detention decision? Yes, for detention of rejected asylum seekers.

If detention is due to rejected asylum seekers' failure to depart, then there is criminal court judicial review of detention within 48 hours of initial detention, according to a 2000 report.⁹⁷²

Asylum seekers detained at the airport do not have independent review of their detention, which is subject to time limits (see below).⁹⁷³

Are there limits on the period of detention? Yes; 5-60 days.

If a decision on admissibility is not made within five days, asylum seekers held at the airport must be released and allowed to enter the territory, according to the PRC in late 2001.⁹⁷⁴ Detention of rejected asylum seekers awaiting deportation is limited to 60 days, according to a 2000 report.⁹⁷⁵

Is there periodic review of detention? No.

Is there access to government-funded legal aid? Limited.

During the initial application for asylum, applicants are provided with legal counseling by the PRC, which is funded by UNHCR, by the Ministry of Home Affairs and by the Ministry of Labour and Social Security.⁹⁷⁶ As of 2001, only during the appeals process are asylum seekers entitled to state-appointed counsel.⁹⁷⁷

Vulnerable groups: The law provides for no special procedures for female asylum seekers or the processing of applications by unaccompanied minors. In practice, they are given financial aid and accommodation by the PRC, and additional social assistance by the Santa Casa da Misericórdia de Lisboa, a social welfare entity. In 2001, the law requiring that minors be represented (in practice, by the PRC) in asylum proceedings was fully implemented.⁹⁷⁸

ROMANIA

Romania is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. During 2000, 1,366 people filed applications for asylum.⁹⁷⁹ In 2001, 2,280 asylum applications were lodged, with 33 pending cases at year's end.⁹⁸⁰ In the first quarter of 2002, 292 applications were filed.⁹⁸¹ No information was available on the number of asylum seekers detained. Romania became a party to the 1951 Refugee Convention in 1991, and in 2000, a new refugee law went into effect to align Romanian asylum policies and practice more closely with European Union standards. Under the new law, asylum seekers are exempt from penalties for illegal entry.⁹⁸²

The U.N. Working Group on Arbitrary Detention reported, in 1998, that asylum seekers without proper travel documents who arrived at the airport in Romania from “safe third countries” were detained. A 2002 report indicates that asylum seekers may not be detained at the airport for longer than 20 days.⁹⁸³

According to the 1998 U.N. Working Group on Arbitrary Detention report, about 2-3% of asylum seekers were typically detained. At the time, it appeared that all other asylum seekers were detained only when they had committed a criminal offence and were subject to the Law relating to the Regime of Foreigners, which provides for detention and deportation for violation of various criminal laws, including leaving their assigned residence, as well as illegally crossing borders. Furthermore, the U.N. Working Group on Arbitrary Detention reported that asylum seekers whose first instance appeal of a negative decision is rejected could be “directed” to residences, which the report refers to as de facto detention, to await removal.⁹⁸⁴

As of 2002, asylum seekers without means may be housed in one of two refugee reception center and provided with financial assistance. Limited medical care may be available.⁹⁸⁵

Is there independent review of the detention decision? No.

There is no judicial review or legal recourse in the event the authorities exercise detention under the Law relating to the Regime of Foreigners.

Are there limits on the period of detention? Yes.

Asylum seekers may be detained at the airport transit zone for no longer than 20 days, according to a 2002 survey.⁹⁸⁶ Authorities may hold foreign nationals for up to 3 months, with the possibility of an extension.⁹⁸⁷

A report issued in 2001 explained that detained asylum seekers processed under the in-country accelerated procedure are not granted Romanian Constitutional protections requiring issuance of a warrant for detentions of longer than 24 hours.⁹⁸⁸

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

The U.N. Working Group on Arbitrary Detention reports that asylum seekers detained in the transit zone of the airport are not considered to be within the territory and so are not protected by the constitutional rights to explanation of the grounds for detention and notification of charges in the presence of an attorney.⁹⁸⁹ Though UNHCR has access to the airport transit zone holding area, they are not always notified of new arrivals. NGOs have limited access to this transit zone as well. According to a 1999 Danish Refugee

Council report, there is only one organization that provides assistance to asylum seekers in the appeals stage, with only two attorneys on staff.⁹⁹⁰

Vulnerable groups: Unaccompanied minors, under the age of 14, are appointed a legal guardian and may be accommodated at a special reception center. According to a 1999 report, few unaccompanied minors have applied for asylum in Romania.⁹⁹¹

RUSSIA

Russian legislation divides migrants fleeing their home country into two classes: forced migrants—*i.e.*, migrants from the countries of the Commonwealth of Independent States (CIS)⁹⁹² and the Baltic States,⁹⁹³ who are in large part displaced Russian citizens; and refugees—*i.e.*, non-Russian citizens from the rest of the world. The two groups are subject to different laws and procedures in determining their status and rights.

The Russian Federation acceded to the UN Refugee Convention and Protocol in 1992 and enacted national legislation to implement the Convention in 1993.⁹⁹⁴ It is also a state party to the International Covenant on Civil and Political Rights, and to its First, but not Second, Optional Protocol. At the end of 2001, the Russian Federation hosted about 28,200 refugees and asylum seekers in need of protection,⁹⁹⁵ including 21,141 refugees registered with the Ministry of Interior (MOI);⁹⁹⁶ 79 mandate refugees recognized by the UNHCR; 742 asylum seekers with cases pending before the MOI; some 5,900 asylum seekers from outside the CIS who were registered with UNHCR; and 330 Afghans granted temporary protection during 2001.⁹⁹⁷ The MOI recognized only 126 persons as refugees in 2001, of whom 111 were from Afghanistan.⁹⁹⁸

The MOI operates Points of Immigration Control (PIC) at around 114 entry points along the border of the Russian Federation which process refugee applications.⁹⁹⁹ Asylum seekers may be detained by border guards for up to three days if they have not entered the country legally—*i.e.*, they do not have a valid travel document or visa.¹⁰⁰⁰ Though entitled to apply for asylum at the border while detained, the vast majority of foreign nationals whom border authorities apprehend are deported before they can gain access to the asylum procedure, and no PIC has ever accepted an asylum applicant.¹⁰⁰¹ According to one study, “because of the difficulty of border monitoring, no credible independent estimates exist of the number of asylum seekers deported or rejected at Russia’s land borders...[U]ndocumented asylum seekers are often deported without the opportunity to address their asylum claim to the PIC... In 2000, the Federal Border Service reported that 69,000 foreigners were turned away at Russia’s borders.”¹⁰⁰²

Applicants from within the Russian Federation are accorded relatively more rights. Refugees who have entered the country, whether legally or illegally, may submit their applications to regional MOI offices. According to one study, the majority of applications that have been submitted to regional MOI offices are from foreigners within

the country who have entered illegally.¹⁰⁰³ Article 5, Paragraph 1 (7) of the Russian Federation Law “On Refugees”¹⁰⁰⁴ states that those who are forced to cross Russian borders illegally must apply to the MOI within 24 hours of their entry. If the applicant fails to comply with the 24-hour deadline, her application may be summarily denied, an extreme measure that is reputedly mostly applied to persons who arrive with no documents.¹⁰⁰⁵

The Russian government does not have a policy to detain registered asylum seekers, although the penal code allows the government to imprison “illegal immigrants,” including unregistered asylum seekers. The penal code also provides that detention should not apply if a person enters the Russian Federation illegally to apply for asylum.¹⁰⁰⁶ Once an individual is in the asylum procedure—*i.e.*, registered with the MOI and has an application filed with them—she is placed in a Temporary Accommodation Center (TAC), until she finds someplace else to live.¹⁰⁰⁷ Few asylum seekers, however, choose to live in TACs, the majority of applicants sharing apartments with other members of their community in the outskirts of cities like St. Petersburg and Moscow.¹⁰⁰⁸ The UNHCR also operates two accommodation centers outside of Moscow. Because of the strict housing registration regime of the Russian Federation, requiring individuals to register their place of domicile with the appropriate authorities, these asylum seekers are often harassed, arrested and detained by the police who routinely check their documents.¹⁰⁰⁹

Once an application has been denied and the applicant does not appeal such decision, the individual is excludable under the Law on Refugees. The Department of Passport and Visa Registration of the Ministry of Internal Affairs (DPVR) then takes over the task of deporting the individual and sets out the term the applicant must leave the country (typically six months); if the individual does not leave within the specified time period, the DPVR makes a decision whether to detain the individual.¹⁰¹⁰

Detention centers in Russia differ little from the country’s prisons, according to one specialist; for example, features of a detention center in St. Petersburg, include two sq. meters of space per person, permanent isolation from the outer world, and a 20-minute walk per day.¹⁰¹¹

Is there independent review of the detention decision? No.

In practice, there is no meaningful independent review of the decision to detain an asylum seeker.¹⁰¹² No formal system is in place for reviewing detention decisions which technically fall under the Administration Code of the Russian Federation. Detained asylum seekers are free to appeal the denial of their asylum application, if they submitted one, but will continue to be detained for the duration of their appeal.¹⁰¹³

Are there limits on the period of detention? No.

In general detention for an asylum seeker not apprehended at the border only occurs if: a) she fails to register her application and the authorities choose to detain her pending deportation proceedings; or b) her asylum claim is denied and 1) she does not appeal such decision and 2) the DPVR chooses to detain her pending deportation proceedings. Once detained pending deportation, the asylum seeker is subject to Article 31 of the USSR Law “On the Legal Status of Foreign Citizens in the RF” (1981),¹⁰¹⁴ still in force in the Russian Federation, which states that “the decision on extradition belongs to competent Soviet bodies. A foreign citizen should leave the Soviet Union within the period the decision specifies. Those who try to avoid extradition will be deported according to the prosecutor’s sanction.” The law is silent on the duration of detention and does not specify a minimum or maximum period of detention. The corresponding legal act states that the cost of deportation is to be paid by the deportee.¹⁰¹⁵

Many undocumented persons (many of whom applied for refugee status) reputedly spend years in detention centers, despite a provision in Russian Law that a person may not be held in detention for a period of more than 48 hours without a court ruling and a Russian Constitutional Court Ruling proscribing prolonged detention.¹⁰¹⁶ The court ruling is really nothing more than a document signed by the court at the instruction of the DPVR. There is no formal trial per se, as the detainee does not participate in the proceedings. When the DPVR wants to detain someone, it simply applies to the court for an extension of the detention period, and the court duly signs an order. Sometimes, this process is repeated indefinitely as the DPVR raises problems such as lack of flights to the detainee’s home country, or an inability to acquire the documents needed to return the detainee to his home country, etc.¹⁰¹⁷ There is no independent review of this decision to extend the detention term.

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

According to the Law on Refugees, asylum seekers are entitled to receive information on the refugee determination procedure, but there is no mention of government-funded legal aid. In 1993, the UNHCR established a Refugee Reception Center in Moscow to register arriving asylum seekers from outside the former Soviet Union and provide them with basic legal assistance. In addition, the non-governmental Migration and Law organization, founded in 1996, operates centers in 46 cities in Russia that offer legal support to refugees and migrants in the form of consultation and representation in courts. Besides providing legal assistance, the centers also help refugees in obtaining medical services, pensions and education.¹⁰¹⁸

Vulnerable groups: There are no special laws for vulnerable groups.

SENEGAL

Senegal is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Senegal hosted more than 40,000 refugees and asylum seekers at the end of 2001, according to a recently released report from the U.S. Committee for Refugees, with the vast majority from Mauritania and a minority from other African countries.¹⁰¹⁹ The most recent statistics from the UNHCR in Senegal indicate that in urban areas, there have been 714 refugees and asylum seekers from Sierra Leone, 436 from Liberia, 346 from Rwanda, and 1,520 from other countries, totaling 3,016. Additionally, the UNCHR reports approximately 20,000 refugees in rural areas, all from Mauritania, and estimates there is a total of approximately 40,000 Mauritanian refugees in Senegal.¹⁰²⁰ The majority of the asylum seekers come from the Great Lakes and Mano River regions of Africa.¹⁰²¹

The National Commission for Eligibility (created by law on July 24, 1968, modified in 1975, and completed by decree 89-1582 on December 30, 1989) is in charge of handing down rulings on the asylum claims introduced by asylum seekers. This group is chaired by a magistrate and the following ministries are represented: Ministry of the Interior, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Social Action, and the UNHCR which is admitted as an observer.¹⁰²²

Asylum seekers are given a receipt of delivery of their demand when their request for asylum is introduced. An asylum seeker shall not be expelled nor detained while waiting for a decision from the Commission but only within the two months of validity of this document.¹⁰²³

For the first half of 2001, the National Commission for Eligibility registered 537 demands for asylum and 135 were examined by the Commission.¹⁰²⁴ According to UNCHR, 958 people applied for asylum in Senegal since January 1, 2001 and since that time, 18 people who had applied for asylum were recognized as refugees in Senegal.¹⁰²⁵

There are two forms of detention in Senegal:

(a) Detention relating to a judicial procedure, after an infraction, is decided by the Court. In 2000, a dozen refugees and asylum seekers were detained for three months after being charged with law and order unrests, before being expelled to Mali.

(b) Administrative detention prior to an expulsion is ordered by the Court. This detention can continue longer than 3 months (which many times is the case) while the detainee is waiting for the means of the expulsion to be found.

Is there independent review of the detention decision? Yes

The decision regarding detention of asylum seekers is subject to the examination of a superintendent of Border Police under the authority of the Minister of the Interior.¹⁰²⁶ There does not appear to be any additional independent review of detention decision.

Are there limits on the period of detention? No.

There is not a maximum period of detention to speak of. It does happen that asylum seekers are detained for long periods of time, sometimes more than 3 months.¹⁰²⁷

Is there periodic review of detention?

From our research and inquiries, there does not appear to be any periodic review of detention.

Is there government-funded legal aid?

There is no information to determine the existence of government-funded legal aid. The UNHCR indicates that it will, in certain conditions, submit an attestation in support of refugees to protect them against expulsion, *refoulement*, or deportation.¹⁰²⁸

Vulnerable groups:

It has been reported that in practice, the authorities take into account the fact that the person is either a woman or disabled.¹⁰²⁹

SLOVAK REPUBLIC

The Slovak Republic is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. In 2000, 1,556 asylum seekers applied for asylum, and 400 applications were awaiting decision at the end of the year.¹⁰³⁰ 8,151 asylum applications were lodged in 2001.¹⁰³¹ In the first quarter of 2002, there were 1,958 applications filed.¹⁰³² During the first nine months of 2000,

approximately 1,700 migrants (not all asylum seekers) were detained at the Slovak-Ukrainian border.¹⁰³³

A new Aliens Law, which became effective in April 2002, allows for a “tolerated stay” for certain asylum seekers and suspends deportation for those appealing their expulsion.¹⁰³⁴ In June of 2002, the Parliament approved a new law expanding the scope of people who may obtain asylum.¹⁰³⁵ This law is scheduled to become effective January 1, 2003.¹⁰³⁶

Police may detain only aliens entering or remaining illegally and those awaiting administrative expulsion.¹⁰³⁷

Asylum applicants, regardless of the legality of their entry into the country, are interviewed at the border, issued a 24-hour pass to a reception center and permitted to file their application for asylum with the aliens police at the border.¹⁰³⁸

After their applications have been sent to the Migration Office, asylum seekers are generally placed in a closed reception center, where they are subject to a 1-month quarantine, although enforcement of the quarantine is reportedly not always strict.¹⁰³⁹ After quarantine, those who cannot provide for their own accommodation are then transferred to a refugee residential center, where they are provided meals, basic medical care and financial assistance. Leaves of more than 24 hours must be approved in advance by the Migration Office.¹⁰⁴⁰

Is there independent review of the detention decision? Yes. Detained aliens may file an appeal within 15 days with the Regional Court.¹⁰⁴¹ This review is not automatic – the detainees must initiate the process.¹⁰⁴² The court considers whether the alien was detained in accordance with law, and whether all procedural rules were followed.¹⁰⁴³

Are there limits on the period of detention? Yes.

According to the new Aliens Law, illegal aliens and aliens awaiting expulsion can be detained for 180 days.¹⁰⁴⁴ Those applying for asylum are not detained.¹⁰⁴⁵

Rejected asylum seekers may not be held for longer than 30 days. Once the 30 days have expired, the asylum seeker is released, still subject to the removal order. If it can be shown that removal to the country of origin is impossible, the asylum seeker may be eligible to apply for a long-term residence permit.¹⁰⁴⁶ The 30 day limit is enforced by the Police, the Department of Aliens and the Border Police.¹⁰⁴⁷

Is there periodic review of detention? No.¹⁰⁴⁸

Is there access to government-funded legal aid? No.

There is no right to government-funded legal aid. Asylum seekers must rely on services from NGOs and UNHCR.¹⁰⁴⁹

Vulnerable groups: Unaccompanied minors are to be housed in a residential center, and the Migration Office must appoint them a guardian to act as representative during the asylum procedure.¹⁰⁵⁰

SOUTH AFRICA

South Africa is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. At the end of 2000, South Africa hosted approximately 30,000 refugees and asylum seekers, and the applications of 15,000 asylum seekers were pending decision.¹⁰⁵¹ At the end of 2001, it hosted approximately 22,000 refugees and asylum seekers, and approximately 3,000 asylum applications were awaiting final decision.¹⁰⁵² No information was available on the number of asylum seekers detained.

Detention of asylum seekers is discretionary and the majority of asylum seekers are not detained and able to move freely within the country.¹⁰⁵³ Those who are detained, however, may be subject to sub-standard treatment or even abuse, as evidenced by the beating death of a detainee alleged to have escaped from the Lindela Detention Center in early 2002.¹⁰⁵⁴ Proposals routinely to detain asylum seekers in government-run reception centers have received stiff opposition from South African civil society, according to a 2001 report.¹⁰⁵⁵ Successful NGO lobbying efforts have led to the inclusion in the Immigration Act 13 of 2002 (not yet in force as of July 2002) of a requirement that detained illegal foreigners be held in compliance with minimum prescribed standards protecting dignity and relevant human rights.¹⁰⁵⁶

Asylum seekers are not subject to mandatory detention. Pursuant to law and regulations in effect in early 2002, asylum seekers are issued temporary permits by the Department of Home Affairs (DHA) when their applications are filed. Asylum applicants may be detained if their permits have been withdrawn. Reasons for withdrawal include: “manifestly unfounded,” fraudulent, or abusive application; contravening a condition of the permit; reentry after the application is rejected; lapse of permit when leaving the country without the consent of the Minister of Home Affairs or ineligibility due to an exclusion or cessation clause. Failure to appear may also constitute grounds for detention.¹⁰⁵⁷

According to a 1999 report, in practice, there have been widespread allegations that the South African Police Services destroy valid permits on the assumption that such documents are fraudulent. Further, there have been numerous assertions that police elicit

bribes from apprehended persons (documented and undocumented) in exchange for freedom.¹⁰⁵⁸

A late 2000 study indicates that asylum seekers are reportedly arrested and detained for failure to carry identity documents, on the basis of a particular physical appearance, for inability to speak any of the main national languages or for fitting a “profile” of an undocumented migrant. In practice, the burden of proof is on the asylum seekers to establish their legal status in the country. There have been allegations that neither the police nor the DHA permits persons to retrieve identification documents from their homes or allows free phone calls to contact friends or family.¹⁰⁵⁹ Asylum seekers, refugees and South African citizens may be detained for days while their right to remain in the country is confirmed.¹⁰⁶⁰

New DHA guidelines, effective January 2002, may alleviate some of these concerns. The guidelines require arresting police officers to have reasonable grounds, and provide the DHA with documented proof of those grounds, to arrest a foreigner on suspicion of being in the country illegally. The proof required includes evidence that the arrestees have been given an opportunity to prove their legal status in the country. The guidelines also provide for improved communication between the police and the DHA. Ideally, such improvement will reduce the time that asylum seekers are detained while their right to stay in the country is confirmed, and, if they are transferred from police custody to detention by the DHA, the time in police custody will be counted towards the 30-day limit on unreviewed detention.¹⁰⁶¹

Many of the asylum seekers at the Lindela Detention Centre are reported to have failed to apply for asylum in South Africa prior to their arrest because they did not understand the application procedures or were afraid of being arrested. Asylum seekers are regularly arrested by the DHA while applying for asylum or renewing asylum permits, for applying or renewing too late or at the wrong office, or under the charges that documents have been forged.¹⁰⁶²

The stated policy of the DHA as of May 1999 is that detained immigrants who affirmatively claim refugee status should be taken to an asylum application office.¹⁰⁶³ It has been reported that, in practice, this directive is seldom followed at the Lindela Detention Centre, as the staff does not have sufficient training to process asylum applications, and detainees are rarely allowed to apply at the nearest Refugee Reception Office in Braamfontein. Further, according to a 2000 report, the DHA does not routinely ask persons who have been arrested under the Aliens Control Act whether they want to apply for asylum.¹⁰⁶⁴

Is there independent review of the detention decision? Yes.

Under the Refugees Act, any detention over 30 days must be automatically reviewed by a judge of the High Court.¹⁰⁶⁵ However, this provision is rarely followed in practice, despite a case won by the Law Clinic of the University of the Witwatersrand and the South African Human Rights Commission (SAHRC) in November 1999, challenging the Department's repeated failure to provide such review to detainees at the Lindela Detention Centre.¹⁰⁶⁶ The court required that Lindela officials report the names of detainees to the SAHRC each month for compliance monitoring, but Lindela and the DHA have failed to provide such reports. The SAHRC noted on September 13, 2000 that 37 persons had been held in excess of the thirty-day limit.¹⁰⁶⁷

Within 48 hours of detention, the asylum seeker must be brought before an immigration officer for an investigation.¹⁰⁶⁸ The burden of proof is on the asylum seeker to establish her eligibility to be freed from detention. If the asylum seeker fails to produce a permit to be in the country, she will be declared a "prohibited person."¹⁰⁶⁹ In cases of doubt, the asylum seeker may be granted a temporary permit to give her time to provide necessary documents. The investigation procedure has been criticized as unconstitutional because it places the burden of proof on the presumed prohibited person and is an administrative rather than a court procedure.¹⁰⁷⁰

Are there limits on period of detention? No.

The Refugees Act provides that no person may be detained for a period longer than is "reasonable and justifiable."¹⁰⁷¹ As noted above, any detention over 30 days is automatically reviewable by a judge of the High Court.

Is there periodic review of detention? Yes; every 30 days.

Legislation provides that any detention over thirty days must immediately be reviewed by a judge of the High Court. Detention must be reviewed every thirty days thereafter.¹⁰⁷² As noted above, these laws are rarely followed in practice.

The SAHRC reported in December 2000 that only one detainee with whom they met at Lindela had been informed of judicial review of her case, and she was not given the opportunity to make a written submission to the court.¹⁰⁷³

One NGO reported in 2001 that in the Cape of Good Hope High Court division, review beyond 30 days under the Refugees Act is heard by a judge in chambers rather than in open court. No records of such review are kept, and detainees and their legal counsel are not provided with effective notice of the application to extend the detention. While the bench is displeased with this practice, which leads to rubber-stamping of the detention decision, they continue to extend detention.¹⁰⁷⁴

Further, the Witwatersrand High Court division has found that failure to give effective notice of an application to extend detention rendered such application unlawful. In that

case, the detainee received notice of the application to extend on the same day that the case was heard. Nonetheless, the court did not render a decision improving judicial oversight of administrative detention.¹⁰⁷⁵

Is there access to government-funded legal aid? Limited.

As a result of efforts in 2001 led by the South African NGO Lawyers for Human Rights, the state-funded Legal Aid Board now funds representation for certain asylum cases.¹⁰⁷⁶ Asylum seekers may now apply anywhere in the country for legal aid relating to applications for asylum, and in Pretoria, Johannesburg, Cape Town, Port Elizabeth, or Durban for legal aid relating to decisions by refugee status determination officers, reviews by the standing committee or appeals to the appeal board.¹⁰⁷⁷

Vulnerable groups:

The South African Constitution provides that every child under the age of 18 has a right to be detained under conditions that take her age into account.¹⁰⁷⁸ Specifically, the Refugees Act states that detention of minors may be instituted only as a last resort and for the shortest appropriate time period.¹⁰⁷⁹

In 2000, it was reported that the Lindela Detention Centre does not have separate facilities for children and therefore does not admit accompanied minors under the age of 15. There are no segregated facilities available at Lindela for women with children, but adults and children sleep in the same room, eat the same food and receive the same treatment from the staff. Dyambu, the corporation that runs the Lindela Detention Centre, supplies women who arrive with small children with diapers, but women often have to ask their families to bring food and clothing for their children to the facility.¹⁰⁸⁰

SPAIN

Spain is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. Asylum seekers filed 7,926 applications for asylum during 2000; at year's end, there were 391 applications pending decision.¹⁰⁸¹ In 2001, 9,490 asylum applications were filed.¹⁰⁸² In the first quarter of 2002, there were 2,531 applications filed.¹⁰⁸³ In Spain, there is no legal basis to detain asylum seekers, apart from the brief admissibility phase at the border, during which an initial determination is made on whether an application will be admitted to the full asylum process.¹⁰⁸⁴ In other circumstances, detention must be approved by a court.¹⁰⁸⁵ No information was available on the number of asylum seekers detained.

In-country applicants are not detained – if they are awaiting decision on the admissibility of their asylum application, they must find their own accommodations, and if they are admitted to the full determination procedure, they may stay at a reception center.¹⁰⁸⁶

Asylum seekers arriving by air must remain at an airport facility or hostel pending an admissibility decision for a maximum of seven days.¹⁰⁸⁷ The initial decision on admissibility must be made and communicated to the asylum seeker within 72 hours. The claimant may appeal a negative decision within 24 hours, and the decision on review must be made and communicated within 24 hours. If the authorities fail to meet these deadlines, the application is automatically deemed admissible and the asylum seeker is released from detention.¹⁰⁸⁸

Asylum seekers whose claims have been rejected and are awaiting deportation may be detained.¹⁰⁸⁹

Spain also detains migrants and asylum seekers arriving at the Canary Islands at the detention centers Fuerteventura and Lanzarote, which have been criticized by Human Rights Watch for overcrowding, lack of telephones, poor medical conditions and absence of legal representation.¹⁰⁹⁰

After release from detention, asylum seekers are referred to reception centers where they may receive social assistance. Reception centers are run by NGOs as well as by the Ministry of Labor and Social Affairs' Institute for Migrants and Social Services. Asylum seekers do not have a choice as to which center they are referred to, though special needs are taken in account.¹⁰⁹¹ Single men, single women and families are accommodated separately.¹⁰⁹² There is no guarantee that space will be available in a reception center, and, consequently, some asylum seekers must find their own accommodation.¹⁰⁹³

The UNHCR representative in Spain is informed of all asylum claims submitted at the border and all applications for review of negative border decisions. UNHCR is entitled to interview these applicants. If the UNHCR disagrees with an inadmissibility decision made by the Minister of the Interior, the asylum applicant may enter Spain and appeal the decision to the High Court (*Audiencia Nacional*). Upon request from the court, removal will be delayed until the decision on admissibility is made. This process allows asylum applicants at the border to be freed from detention.¹⁰⁹⁴

Human Rights Watch recently criticized Spain's application of its immigration law as arbitrary, often resulting in disparate and discriminatory treatment of certain groups as well as in serious violations of migrants' procedural rights.¹⁰⁹⁵

For in-country applicants, the procedure for the admissibility of their applications to the full asylum determination process is similar to that described below for border applicants, except for the time limits. The Ministry of Interior has 60 days to review a first decision to deny the application. Following a negative determination by the Ministry, the in-country applicant has 15 days to leave the country or to appeal to the relevant court.¹⁰⁹⁶

Is there independent review of the detention decision? Yes.

Border applicants are initially interviewed by the border police or the Office for Asylum and Refuge in Madrid, and are given an initial decision on the admissibility of their asylum applications within four days following the date of their claim. Where admission of the application is refused and entry not permitted, the applicant may request, within one day, review by the Ministry of the Interior which has two days in which to respond. At this juncture, UNHCR's opinion is also sought. If the Ministry does not respond within four days, or the applicant is allowed to enter the full asylum procedure, the applicant is released from the airport area and allowed into the country. If the Ministry rejects the appeal, the applicant may request review by the National High Court within two months.¹⁰⁹⁷

Detention of arriving aliens who enter illegally can only be extended (after the initial 72-hour detention) by a court order.¹⁰⁹⁸

The administrative authority (the police) wishing to detain rejected asylum seekers awaiting deportation must obtain judicial authorization of detention within 72 hours.¹⁰⁹⁹ The authority must provide justification for detention while awaiting execution of the deportation order; if the authority cannot prove that detention is necessary for deportation, or that deportation will actually occur, the judge will not authorize the detention.¹¹⁰⁰ If the detention is authorized, the detainee is held only as long as necessary to execute the deportation order, up to a maximum of 40 days.¹¹⁰¹ If the deadline for deportation is not met, the police must release the rejected asylum seeker.¹¹⁰²

Are there limits on the period of detention? Yes.

Border applicants may be held for a maximum of seven days, if an appeal is taken. If no decision is made within four days on an initial application for admission, the detainee must be released and admitted to the normal determination procedure.¹¹⁰³ A court may extend the administrative detention of aliens entering illegally to 40 days.¹¹⁰⁴

Aliens detained for illegal stay in Spain who apply for asylum within the detention center are entitled to decisions on the admissibility of their claims within sixty days. If their claims are admitted to normal determination procedures, they are released.¹¹⁰⁵ Stowaways, unless in need of immediate medical assistance, are required to remain on board their vessel until a decision is made on admissibility.¹¹⁰⁶

Aliens awaiting deportation may be detained for a maximum of 40 days.¹¹⁰⁷

Is there periodic review of detention? No.

While there are the various time-limits on detention described above, there is no periodic review.

Is there access to government-funded legal aid? Yes.

Indigent asylum seekers both at the border and in-country are provided with appointed government-funded legal counsel from the local bar association.¹¹⁰⁸ However, the quality of legal representation for migrants is generally poor and most of them do not receive legal interpretation services.¹¹⁰⁹ Provision of this service vary among provinces.¹¹¹⁰ While most applicants apply for asylum in-country, officials are less likely to inform these applicants of their right to counsel than those at the border.¹¹¹¹

Vulnerable groups: Unaccompanied minors under age 18 are appointed a legal representative for the duration of the asylum procedure, and are placed under the supervision of the child protection authorities. They may be housed in a special facility for minors. Female asylum seekers are given priority with respect to accommodation at reception centers¹¹¹² and may be assisted by female interviewers and interpreters, depending on availability and whether the asylum seeker knows to request such assistance.¹¹¹³

Human Rights Watch recently released a report documenting serious abuses of migrant children in Spain, in particular in the cities of Ceuta and Melilla. Among the abuses cited were overcrowding, unsanitary conditions, extortion, theft, physical attacks, and denial of health and education services and other legal rights.¹¹¹⁴ The autonomous government of Melilla has denied the allegations in the report. In May it decided to refuse to accept unaccompanied migrant children.¹¹¹⁵

SWEDEN

Sweden is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. Some 16,303 applications for asylum were filed in 2000, and at the end of the year, 10,833 applicants were awaiting decision on asylum applications.¹¹¹⁶ In 2001, some 23,515 asylum applications were lodged and at the end of the year, approximately 16,000 applications for asylum were pending.¹¹¹⁷ In the first three months of 2002, 7,240 people sought asylum.¹¹¹⁸ No information was available on the number of asylum seekers detained.

Asylum seekers may be detained if their identity and nationality are in doubt, if they are likely to be refused entry or be expelled, if questions arise regarding ability to enforce a refusal-of-entry or expulsion order, or if they are likely to abscond or to commit a criminal offense.¹¹¹⁹ The decision to detain may be made by one of four agencies: the police, the Immigration Board (SIB), the Aliens Appeals Board, or the Minister of Foreign Affairs. When the decision is made by the police, it must be confirmed by one of the other three.¹¹²⁰

Non-compulsory accommodation is provided in reception centers overseen by the Swedish Immigration Board (SIB). These consist of furnished flats which accommodate

families as well as shared flats for single asylum seekers.¹¹²¹ Financial assistance may be provided to needy asylum seekers by the SIB,¹¹²² which usually requires that recipients participate in activities such as language or job training.¹¹²³ Some reception centers also provide on-site medical care and specialized counseling for survivors of torture.¹¹²⁴

Is there independent review of the detention decision? Yes.

Detention orders generally are to be reviewed within two weeks and detention orders related to refusal-of-entry or expulsion orders are to be reviewed within two months. If such review does not take place within these periods, the detention order ceases to be applicable. If the orders are continued upon review, they are to be reviewed periodically at the same intervals indicated above by the County Administrative Courts.¹¹²⁵

Decisions to detain made by the police, the SIB or the Aliens Appeals Board may be appealed by the asylum seeker to an administrative court; leave is required to appeal the administrative court's decision to the Administrative Court of Appeals. Detention decisions made by the Minister of Foreign Affairs may be appealed to the Supreme Administrative Court.¹¹²⁶

Are there limits on period of detention? Yes.

According to a late 2000 report, detention to determine an asylum seeker's right to stay in Sweden is limited to 48 hours and detention to ensure removal or determine identity is limited to two weeks, though these periods may be extended indefinitely on exceptional grounds.¹¹²⁷

Pre-deportation detention is limited to two months, with the possibility of an unlimited number of extensions.¹¹²⁸ Such detention may last over one year, in particular for those who cannot be removed due to conditions in their country of origin.¹¹²⁹

Is there periodic review of detention? Yes.

There is regular review by County Administrative Courts¹¹³⁰, at two-week intervals for ordinary detention orders, and at two-month intervals for detention orders related to refusal-of-entry or expulsion orders, according to the Swedish Red Cross in late 2001.¹¹³¹

Is there access to government-funded legal aid? Limited.

Free state-funded legal aid is provided under the normal determination procedure.¹¹³² Under the accelerated procedure, however, there is a right to legal counsel but not to state-funded legal aid (unless the deportation is to the country of origin, in which case free legal counsel is provided by the government).¹¹³³ Asylum seekers with respect to whom there is a strong presumption that they will be granted refugee status are also not provided with legal aid.¹¹³⁴ Legal aid is always provided for appeals.¹¹³⁵

Vulnerable groups: Unaccompanied minors are processed under the normal determination procedures, and are appointed both a guardian to assist during interviews and a legal representative. They may be detained only under exceptional circumstances and,¹¹³⁶ if under 18, may be detained for no longer than 6 days, according to a source in late 2001.¹¹³⁷ As of 2000, there are no special accommodations made for female asylum seekers.¹¹³⁸

SWITZERLAND

Switzerland is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, and its Second, but not First, Optional Protocol. During 2000, 17,611 people applied for asylum; at the end of the year, first-time decisions were outstanding on 15,137 applications.¹¹³⁹ 20,633 asylum applications were lodged in 2001; at the end of the year, first-time decisions were outstanding on 14,603 applications.¹¹⁴⁰ In the first quarter of 2002, 5,612 applications were filed.¹¹⁴¹ No information was available on the number of asylum seekers detained.

Asylum seekers may be detained at the airport for up to 22 days while awaiting a decision on granting entry or expulsion to the home or a third country by the Swiss Federal Office for Refugees. During this period, asylum seekers must stay in the airport transit zone, where accommodation, food and emergency health care are available. If no decision is taken in this period, asylum seekers must be granted entry.¹¹⁴² Several asylum seekers have claimed that they were not provided the opportunity by authorities at the airport to file their asylum claims in 2001.¹¹⁴³

If a negative decision is taken within the 15 days, asylum seekers may be detained in the airport transit zone awaiting the next regularly scheduled flight for up to another 7 days. Asylum seekers may ask for the restitution of suspensive effect with an appeal within 24 hours of notification of the decision; during that initial 24-hour period, and until a decision on the request for restitution of suspensive effect is taken, expulsion may not be carried out. Asylum seekers may be detained for another 3 days if they have introduced a petition on restitution of suspensive effect. Consequently, the total initial period of an asylum seeker's detention may be 25 days: 15 days awaiting the initial decision, 3 days during the procedure on restitution of suspensive effect and 7 days awaiting a flight connection.¹¹⁴⁴

In-country admissibility procedures, which are often processed in the reception centers, may apply in the following situations: failure of an asylum seeker to establish identity or nationality; unwillingness to cooperate with authorities; presentation of a false identity; filing an asylum claim in the context of a criminal proceeding; arrival from a "safe third country" or "safe" country of origin; or having been subject to a prior order of removal from Switzerland.¹¹⁴⁵

Pursuant to the in-country admissibility procedure, asylum seekers may be detained for 72 hours if immediate removal is ordered contemporaneously with notification of a negative decision. Asylum seekers in this instance have 24 hours to request restitution of suspensive effect and may be expelled subsequently if they do not ask for the restitution or if the restitution is rejected.¹¹⁴⁶

Asylum seekers awaiting a first instance decision under any procedure may be held in preparatory detention for a maximum of 3 months if they have: refused to reveal their real identity or applied for asylum using different identities; repeatedly and without cause missed asylum interviews; left an assigned area or entered a restricted area; applied for asylum only after a decision to expel or a sentence for a criminal conviction; or been prosecuted for crimes such as threat to life or freedom.¹¹⁴⁷

Asylum seekers whose claims have been denied may be detained for up to nine months¹¹⁴⁸ if a ground for detention is given. The possible grounds for such detention are the same as those for preparatory detention, including a concrete indication that a person is willing to abscond to avoid expulsion. Detention can be ordered for up to an initial 3 months, and renewed for another 6 months if special conditions prevent the expulsion.¹¹⁴⁹ Such detention may also apply after an airport procedure.¹¹⁵⁰

NGOs have alleged that in 2001, asylum seekers were subject to arbitrary arrest and detention on unsubstantiated charges. Many administrative detention decisions were reportedly overturned by the federal court during 2001.¹¹⁵¹

NGOs have also criticized detention conditions and procedures. In September, a rejected Algerian asylum seeker, confined for two months in a detention center, hanged himself in his cell on the day of his scheduled deportation.¹¹⁵²

Asylum seekers are referred initially to reception centers and then dispersed among individual Cantons, where they are typically housed in collective centers. Cooking facilities are often available and families are sometimes housed separately. Asylum seekers are entitled to medical care, arrangements for which vary among Cantons. Where asylum seekers can be provided for financially by friends or family, they may stay elsewhere than the state-run centers.¹¹⁵³ Asylum seekers may be directed to remain in a specified area, or not to enter specified areas if they have been disturbing public order.¹¹⁵⁴

Is there independent review of the detention decision? Yes.

There is automatic judicial review of initial detention and detention pending expulsion after 96 hours, with appeal of the review decision possible. Asylum seekers can ask for judicial review of the initial 15-day detention at the airport. No judicial review is available for the additional 7 to 10 days when asylum seekers may be detained in the transit zone after a first instance airport decision. In addition, no judicial review is

contemplated for the detention of up to 72 hours pending decision on restitution of the suspensive effect.¹¹⁵⁵

Detained asylum seekers may submit petitions for release to the local judicial authority in the Canton where they are detained one month after the initial review of detention. Where continued detention is ordered, asylum seekers in preparatory detention may file subsequent petitions for release every month thereafter. Many administrative detention decisions to detain asylum seekers were reportedly overturned by the federal court during 2001.¹¹⁵⁶

Are there limits on the period of detention? Yes; 72 hours to nine months.

The limit for detention while awaiting a decision on a request for restitution of a suspensive effect is 72 hours. Asylum applicants at the airport may be held for a maximum of 25 days: 15 days for the initial decision, 3 days awaiting the decision on an appeal and 7 days awaiting the next flight connection. The limit for preparatory detention is 3 months and for detention pending expulsion is 9 months.¹¹⁵⁷

Is there periodic review of detention? Yes; every month.

Detained asylum seekers may submit a petition for release to the local judicial authority in the Canton where they are detained one month after the initial review of detention. Appeal may be taken of the decision on the petition. Where continued detention is ordered, asylum seekers in preparatory detention may file subsequent petitions for release every month thereafter, and those awaiting expulsion may file such petitions every two months.¹¹⁵⁸

Is there access to government-funded legal aid? Limited.

Indigent asylum seekers generally have access to the state-funded legal aid system during the asylum procedure only if their cases involve complex legal issues or have a high chance of success on appeal. Under these restrictions, asylum seekers are rarely granted state-funded attorneys, according to a 2000 report.¹¹⁵⁹ Pursuant to a High Court decision, legal aid must be granted to detainees awaiting deportation upon request three months into the extension of detention proceedings.¹¹⁶⁰

Vulnerable groups: A “person of confidence” must be nominated to accompany unaccompanied minors at their interviews. It is a controversial question whether such persons must have legal knowledge and provide legal defense for the minors.¹¹⁶¹

THAILAND

Thailand has not ratified the 1951 Refugee Convention and does not recognize the status of refugees. As a result, asylum seekers are not distinguished from other immigrants,

legal or illegal. The Thai government asserts that it applies humanitarian conditions and observes the 1951 Convention in practice.¹¹⁶² Thailand is a state party to the International Covenant on Civil and Political Rights, and to its First, but not Second, Optional Protocol. According to a 2000 report by the U.S. Committee for Refugees, the Thai Foreign Ministry announced in July 1999 that it was studying the possibility of acceding to the 1951 Convention.¹¹⁶³ The Thai government asserted that, at the end of 2001, Thailand hosted 109,000 displaced persons, while an NGO reported that the country was host to more than 277,000 refugees and displaced persons, of which more than 276,000 were from Burma.¹¹⁶⁴ At year's end, there were 175 Burmese with cases pending before UNHCR and 343 other with pending asylum claims.¹¹⁶⁵ No information was available on the number of asylum seekers detained.

Jesuit Refugee Services has reported that in Thailand, all immigrants without valid documents are seized by the authorities and detained in immigration detention centers until they self-deport.¹¹⁶⁶ The Thai government reported in early 2002 that it aims to avoid prolonged detention and, thus, to send illegal migrants back to their countries of origin as soon as possible after completion of appropriate legal processes.¹¹⁶⁷ Asylum seekers from bordering countries such as Burma, Cambodia and Laos are deported to the border.¹¹⁶⁸ Those determined to be 'displaced persons' are sent to one of 9 temporary shelters, which the government describes as 'open camps.' Residents of the temporary shelters may seek permission to leave the camps for particular purposes, such as to seek specialized health care.¹¹⁶⁹

Illegal migrants whom the UNHCR has recognized as "person of concern" will not be deported back to their countries of origin, according to the Thai government. Instead, the UNHCR will take responsibility for such persons, with a view to resettling them in third countries.¹¹⁷⁰

Conditions in detention are reported to be critical. In one facility, over 1400 immigrants are reported to be cramped into a facility which houses and provides food and water for only 700. Immigrants rely on visits from NGOs for water and food¹¹⁷¹ to supplement that provided by the government.¹¹⁷²

Is there independent review of the detention decision? No.

There is no independent review of the administrative detention decision. Unless bail is posted pursuant to a criminal charge, there is no means of release from immigration detention into the territory.¹¹⁷³

If criminal charges have been brought against asylum seekers for illegal entry, they are brought before a court and may be sentenced to two years imprisonment. If the offense of illegal entry is combined with other offenses, such as falsification of documents, the term may be longer.¹¹⁷⁴ At this point, bail may be set.¹¹⁷⁵ Jesuit Refugee Services has

reported that many asylum seekers complain that although the Thai legal scheme makes provision for them to have state-appointed counsel to represent them in these instances, they are typically unrepresented and without the benefit of interpreters in the courtroom.¹¹⁷⁶ The Thai government's position is that many who have resided illegally in Thailand, or have overstayed, have admitted their offenses and waived the possibility of having legal representation.¹¹⁷⁷

Are there limits on the period of detention? No.

There is no limit on the time asylum seekers may spend in immigration detention. Unless bail is posted pursuant to a criminal charge, there is no means of release from immigration detention into the territory.¹¹⁷⁸ Asylum seekers who reach the UNHCR and are subsequently granted refugee status by the UNHCR may then be moved to a special detention center to await resettlement to another country, which is also indefinite.¹¹⁷⁹ There are known cases of families spending years in detention in Thailand.¹¹⁸⁰

Is there periodic review of detention? No.

Is there access to government-funded legal aid? No.

There is no free legal aid in asylum cases. Asylum seekers depend on aid from NGOs. An NGO reported in June 2001 that access to these groups and private attorneys is limited as telephones are restricted to those with money and letters must often be taken out by visitors and volunteers.¹¹⁸¹ The Thai government stated in early 2002 that NGOs have offices in the main detention center of the Immigration Bureau and that asylum seekers may thus contact such NGOs at all times.¹¹⁸²

Vulnerable groups: In accordance with arrangements made with the International Organization for Migration, unaccompanied minors are permitted to stay at the state-run Ban Kred Trakarn Protection and Occupational Development Center near Bangkok, where training courses are available.

As of early 2002, women and children trafficked from neighboring countries who have been recognized as victims of transnational crime are also permitted to stay in the Ban Kred Trakarn Center, or at other center run by NGOs, while awaiting return or reunification with their families in their home countries.¹¹⁸³

UGANDA

Uganda is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Uganda hosted approximately 175,000 refugees at the end of 2001.¹¹⁸⁴ According to the UNHCR, Uganda follows a "liberal refugee policy."¹¹⁸⁵ Many refugees live in settlements rather than camps and receive farmland to

grow their own food. In addition, the government grants automatic refugee status to refugees from Sudan and Congo-Kinshasa and authorities typically conduct interviews with asylum seekers from other countries to determine whether they merit refugee status.

Generally, asylum seekers are not detained. However, they may be arrested as illegal immigrants if they do not present themselves to the authorities within a reasonable time (2 to 4 weeks) after entering the country or if they are found without any identification, in which case they may be charged under the Immigration laws of Uganda for illegal entry. As long as an asylum seeker has valid documentation from the Directorate of refugees stating that he or she is an asylum seeker in Uganda whose case is awaiting the decision of the Refugee Eligibility Committee, he or she may not be detained.¹¹⁸⁶

Is there independent review of the detention decision? No.

Is there periodic review of detention? No.¹¹⁸⁷

Are there time limits on the period of detention? No.¹¹⁸⁸

Is there access to government-funded free legal aid? No.¹¹⁸⁹

Vulnerable groups: Special arrangements for vulnerable groups are made by the UNHCR.¹¹⁹⁰

UNITED KINGDOM

The United Kingdom is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, and its Second, but not First, Optional Protocol. During 2000, 80,315 people filed applications for asylum (excluding dependents); at the end of the year, 89,100 applicants were awaiting an initial decision on their claims.¹¹⁹¹ In 2001, approximately 71,700 people applied for asylum; at year's end, 39,400 applications were pending an initial decision.¹¹⁹² At the end of 2001, some 1,400 asylum seekers were being detained under the Immigration Act, a sharp¹¹⁹³ increase from the 741 asylum seekers detained at any one time in 1998.¹¹⁹⁴ When all of the new secure removal centers are operational, about 4,000 will be detained. In the first 3 months of 2002, over 19,500 asylum applications were filed.¹¹⁹⁵

There is no mandatory or automatic detention. Asylum seekers whose claim is deemed to be "manifestly unfounded" by the Secretary of State can be detained by immigration officers. Asylum seekers who apply at the border may also be detained by immigration officers.¹¹⁹⁶ Grounds for detention as of May 2002 include investigation into identity or the basis of any asylum claim, prevention of absconding and assurance of removal, per

official instructions related to the Immigration Act.¹¹⁹⁷ According to Immigration Service Instructions of 1991 and 1994, factors in determining whether detention is appropriate include community ties and prior history of compliance with immigration laws and procedures.¹¹⁹⁸ The 1994 instructions also provide that detention is authorized only when no alternatives are available.¹¹⁹⁹ Despite these guidelines, interviews in 1999 with immigration officers at ports revealed that detention was being used for reasons outside its intended purposes, including deterrence, intelligence-gathering, administrative convenience and crime prevention.¹²⁰⁰ A June 2002 study concluded that whether an asylum seeker is detained may be quite arbitrary, depending on the availability of accommodation on that day.¹²⁰¹

In December 2001, the United Nations Human Rights Committee issued observations and conclusions reflecting concern that asylum seekers had been detained “on grounds other than those legitimate under the [International Covenant on Civil and Political Rights], including administrative convenience,” and that refused asylum seekers whose deportation might be impossible were detained for extended periods.¹²⁰²

A decision of the High Court in September 2001 found that the detention of three Iraqi Kurds in the Oakington detention center violated Article 5.1 of the European Convention on Human Rights, as they were detained solely for administrative convenience.¹²⁰³ This decision was overturned in October 2001 by the Court of Appeals, which ruled that asylum seekers may be detained during the processing of their applications for periods not exceeding 10 days.¹²⁰⁴ Lawyers for the detainees on whose behalf the case was brought were given permission to take the case to the House of Lords, the UK’s highest court, which heard the case in early 2002.¹²⁰⁵ As of August 26, 2002 a decision had not yet been issued.¹²⁰⁶

The UK reportedly detains more immigrants for longer periods than any other EU country.¹²⁰⁷ According to a 2000 report, the government has declared a shift in detention policies to focus more on detention of individuals awaiting removal than detention during the admissibility phase.¹²⁰⁸ NGOs have disputed this claim, however, and statistics from 1998 establish that at least three-quarters of detained asylum seekers were awaiting a decision on their application (half on the initial application and one quarter on an appeal).¹²⁰⁹ A general difficulty has been identified in obtaining clear statistical information as to who is being detained and for what reason. Statistics published by the Home Office for the quarter ending December 2001 do not distinguish between asylum seekers detained upon arrival and those detained following a negative decision on appeal.¹²¹⁰ An NGO reports that the government has repeatedly refused to collect these statistics.¹²¹¹ Anecdotal casework of visiting NGO groups indicates that, as of May 2002, approximately 50% of detainees were either new applicants or awaiting results of appeal.¹²¹²

Most asylum seekers are granted temporary admission at some stage.¹²¹³ The Government as of early 2002 reports that there is a presumption in favor of temporary admission or release, and estimates that at any one time, approximately 1.5% of those liable for detention are actually detained.¹²¹⁴ On October 29, 2001, the Home Secretary announced in Parliament that, from January 2002, asylum seekers would be held in detention centers rather than in mainstream prisons except where they had also been convicted of a crime, but according to a British NGO as of June 2002, this commitment is not being honored.¹²¹⁵ The United Nations Human Rights Committee in December 2001 expressed the view that any detention of asylum seekers in prison was “unacceptable,” and called on the U.K. to end the practice.¹²¹⁶ Concerns have been reported relating to use of prison as a punishment for peaceful protest in detention centers, from which punishment there is no right of appeal, and the transfer of detainees to prison with no reason given or written record of the basis for the decision.¹²¹⁷ There was also concern regarding separate legislation allowing detention without trial of asylum seekers suspected of terrorist links.¹²¹⁸ A July 2002 U.K. court decision holding internment of foreigners without trial under this legislation unlawful did not erase the concerns, since the unlawfulness was based on the fact that the law applied only to non-British citizens.¹²¹⁹ More generally, concerns have been raised by observers that detained asylum seekers are held for unlimited periods without information as to their status or realistic access to judicial procedures that might secure their liberty.¹²²⁰

The number of detention spaces is anticipated to be increased from 1,785 as of May 2002 to 4,000 with the opening of additional centers by 2003, though the destruction of some 900 detention spaces in connection with a fire at the Yarls Wood detention center raises a question as to whether this goal can be met.¹²²¹ (A serious fire in February 2002 at the Yarls Wood detention center has focused attention on concerns that have been raised about conditions there. Since the opening in November 2001 of the Yarls Wood detention center, detainees there have engaged in a series of protests regarding, among other things, delays in provision of medical care and poor access to educational facilities for children.¹²²²) A June 2002 study questions the wisdom of the anticipated increase in detention spaces, suggesting that the necessity for detention should decrease in light of the stricter reporting requirements and accommodation and tracking systems being introduced in the new Nationality, Immigration and Asylum Bill, discussed further below.¹²²³

Under the Nationality, Immigration and Asylum Bill (the “Bill”), which was introduced in the House of Commons on April 12, 2002, detention centers will be renamed “removal” centers.¹²²⁴ Given the lack of government-generated statistics on what proportion of asylum seekers are detained while awaiting decisions on their applications, as opposed to while awaiting removal after a final decision, the name change may be misleading.

The Bill proposes to repeal the provisions of the Immigration and Asylum Act of 1999 that provide for an automatic bail hearing before the Immigration Appellate Authority no later than 7 days and 35 days after detention. The Bill proposes to maintain current provisions allowing detained asylum seekers to apply for bail, and gives the power to grant bail to the Secretary of State in the same situations as are currently available to the Chief Immigration Officer.¹²²⁵

Grave concern has been expressed at the government's proposal to repeal the automatic bail provisions.¹²²⁶ The proposal was set forth in the February 2002 White Paper entitled *Secure Borders, Safe Haven* (paragraph 4.83), which set the stage for many of the proposed elements of the Bill. The Government in 1999 accepted the need for automatic bail hearings, but the legislation was never implemented.¹²²⁷

New induction centers will provide information on the asylum process, how to get advice, basic screening and an assessment of support needs. All asylum seekers will be required to attend the induction, which is expected to last approximately a week.

Accommodation centers for destitute asylum seekers will be introduced on a trial basis during 2002 and will initially hold 3,000 people in four centers with full board accommodation. The Home Office distinguishes the accommodation centers from the removal centers, indicating that people whom the government thinks will abscond will not be placed in accommodations centers.¹²²⁸ Health care, education, interpretation, activities and access to legal aid (contingent upon availability of qualified practitioners) will be provided on-site and limited financial assistance will be available to residents. Various groups have expressed opposition to the planned segregated education of children of asylum seekers.¹²²⁹ Asylum seekers will be able to come and go from the accommodation centers but, under the Bill, must continue to reside in their assigned center and will be subject to reporting requirements to demonstrate such continuation. The centers will be in non-urban areas which will have the effect of further restricting the movement of the residents. Failure to report or follow rules for an accommodation center may disqualify asylum seekers from entitlement to support. The European Council on Refugees and Exiles reports that in April 2002, seven reporting centers were set up, with asylum seekers within a 25 mile or 90-minute traveling radius having to report to one of them.¹²³⁰ The "support only" option previously available to asylum seekers opting not to live in state-provided accommodation will no longer be available. The Bill also provides that additional conditions, such as requiring permission for absences during specified hours, may be imposed on residence in the accommodation centers.¹²³¹

The British Refugee Council has urged that the government should also pilot a community-based model. The model is based on a network of centers each having from 50 to 100 beds, to house between 300 and 600 asylum seekers in all. Every resident in the network would benefit from an individual casework management plan.¹²³²

Is there independent review of the detention decision? Yes.

While detained asylum seekers are entitled to seek judicial review or file an application for a writ of *habeas corpus*, each before the High Court,¹²³³ an NGO has reported that, in its experience, detainees rarely seek either judicial review or *habeas corpus* remedies. Moreover, where it is sought, *habeas corpus* is reportedly rarely employed before a detained asylum seeker has spent several months in detention.¹²³⁴ An asylum seeker applying for *habeas corpus* must show that the authorities had no lawful power to detain, which is reportedly difficult, given the breadth of the government's powers of detention. Applicants for judicial review must show that their detention is unlawful for a reason other than the absence of legal power to detain.¹²³⁵

Detainees also have the option of requesting a bail hearing after 6 days of pre-decision detention or pending the hearing of an appeal of an initial negative decision,¹²³⁶ but do not have a statutory right to such a hearing.¹²³⁷ The asylum seeker making a bail application must show that the detention is not justified, but, unlike in *habeas corpus* or judicial review procedures, does not need to show that the detention is unlawful.¹²³⁸ Application for bail is made to the Immigration Appellate Authority or Tribunal (independent entities) or to an immigration officer.¹²³⁹ Refusal to grant bail cannot be appealed, but an asylum seeker may make subsequent applications if there has been a change in circumstance, including additional time spent in detention.¹²⁴⁰ Concern has been expressed that the effect of the current bail system is to leave asylum seekers in detention without access to court review for long periods because of flaws and inconsistencies in the system¹²⁴¹ that prevent asylum seekers without significant resources from lodging bail applications. In particular, complaints have been leveled against the requirement in most cases that asylum seekers post two sureties, which can amount to thousands of pounds and are thus often prohibitive, the requirement that a bail application must be deemed by counsel to have at least a 50% chance of success for government funds to be made available to pay for counsel's services,¹²⁴² and the burden of proof that requires the detained applicant to show that she will not abscond if released.¹²⁴³

Initial decisions to detain by immigration officers are reviewed automatically within 24 hours, then again after a week and thereafter monthly, but such review is undertaken by the Immigration Service, not an independent authority.¹²⁴⁴ In late 2001, a British NGO expressed concern about the nature and quality of this review.¹²⁴⁵

Are there limits on the period of detention? No.

There has never been a statutory maximum limit on the length an asylum seeker may be detained, regardless of the reason for detention.¹²⁴⁶ In 2001, the U.K. Human Rights Committee expressed concern that asylum seekers awaiting deportation were being detained for extended periods where deportation might be impossible.¹²⁴⁷ An NGO in

mid-2002 raised concerns that such prolonged detention without possibility of return to country of origin could amount to arbitrary detention.¹²⁴⁸

Asylum seekers whose applications are being processed under the fast-track procedures may be detained for an initial period of ten days at Oakington Reception Centre while their applications are being processed.¹²⁴⁹ At the end of ten days, they may either be granted temporary admission or, if needed, moved to another detention facility, while a decision is reached on their applications.¹²⁵⁰

Is there periodic review of detention? Limited.

As noted above, decisions to detain by immigration officers are reviewed monthly but such review is undertaken by the Immigration Service, not an independent authority. In addition, concerns about the nature and quality of this review have been expressed.

Is there access to government-funded legal aid? Limited.

Indigent asylum seekers are entitled to free legal services. The Immigration Advisory Service or Refugee Legal Centre have presences in detention centers.¹²⁵¹ In practice, however, it has been reported that asylum seekers are not always able to gain timely access to this aid.¹²⁵² The United Nations Human Rights Committee in December 2001 expressed concern that “dispensing asylum seekers may have adverse effects on their ability to obtain legal advice and upon the quality of that advice.”¹²⁵³ The minority of asylum seekers housed in accommodation centers will have access to legal aid in theory, provided adequate supply of qualified practitioners can be secured. As of June 2002, the Legal Services Commission had funded training and start-up packages to increase the overall supply of legal services available to asylum seekers, as well as “second tier advice” projects for experienced practitioners to advise newer practitioners and a pilot referral system through the Refugee Council to direct asylum seekers to legal help.¹²⁵⁴

According to a source in July 2001, many lawyers do not undertake bail hearings unless the client can provide the substantial sureties described above.¹²⁵⁵ Moreover, asylum seekers on appeal are granted legal aid only if they can show that their case has a good chance of success,¹²⁵⁶ and lawyers handling such appeals often have little time to prepare for the proceedings.¹²⁵⁷

Alternatives to detention: Reporting requirements, restriction of movement. Regarding the use of bail, June 2002 study tracing 98 detained asylum seekers subsequently released on bail revealed that 90% satisfied the conditions of their bail, including reporting and attendance at hearings, despite evidence that they had been detained because of their high risk of absconding. The study, conducted by South Bank University, London, found detention to be inefficient and poorly targeted, and cast doubt on the notion that detention is necessary to prevent absconding and assure compliance with asylum procedures.¹²⁵⁸

As detailed above, the U.K. Home Office has stated its intention to pilot four large accommodation centers and the British Refugee Council has proposed that the government also pilot a community-based network of smaller accommodation centers, with provision of casework services.

Vulnerable groups: According to the Home Office in early 2002, unaccompanied minors, who are generally appointed Government-funded advisers, are not detained other than overnight so as to make arrangements for their care.¹²⁵⁹ On occasions when age is in dispute, immigration officers may overrule the views of health or social service officers; there is no universally accepted age test.¹²⁶⁰

The Harmondworth and Dungavel detention facilities, opened in 2001, reportedly detain for the first time significant numbers of children in families prior to deportation.¹²⁶¹ The government's expansion of criteria for detention of children was not based on statistical evidence that families are prone to abscond and has raised serious concerns.¹²⁶² Under a change of policy announced by Kevan Brewer, Director of the Immigration Service Detention Service at the Home Office in a letter of October 25, 2001, the Home Office would in future detain families (including children) at any stage in the process including on arrival if considered justified. The policy statement relates to families "whose circumstances justify this (*i.e.*, a risk of absconding, identities and claims need to be clarified or pre-removal)... families would be detained only after consideration of each individual case and where this was considered necessary in order to prevent unauthorized entry (*i.e.*, whilst their identities and claims were being established and/or where there were reasonable grounds for believing that they would abscond if given temporary admission or release) or to effect removal." British NGOs consider that this policy is contrary to the U.N. Guidelines on the Detention of Asylum Seekers, to the European Convention on Human Rights and to the Convention on the Rights of the Child.¹²⁶³

The Medical Foundation for the Care of Victims of Torture reports that as of March 2001 there are no special provisions for victims of torture, who are routinely detained without regard to the health consequences of such detention.¹²⁶⁴ New rules (the Detention Centre Rules) came into force in April 2001, providing that relevant medical practitioners shall report to detention center managers on the case of any detained person who the practitioner believes may have been a victim of torture. It remains to be seen whether this provision will effectively alter the situation for detained torture victims.¹²⁶⁵

UNITED STATES OF AMERICA¹²⁶⁶

The United States has mandatory detention for arriving asylum seekers who come to the US without valid travel documents and are therefore subject to an "expedited removal" process. Asylum seekers are taken, often in handcuffs and shackles, to detention centers, jails and prisons. Those who are determined to have a "credible fear or persecution" are no longer subject to the expedited removal process and are technically eligible to apply

for parole, but parole practices vary depending on the practices of local immigration authorities. Asylum seekers who apply for asylum after they have already entered the United States are not generally detained.

The expedited removal process itself is wrought with flaws. It entrusts the decision to deport an individual who arrives with false or invalid travel documents to an immigration inspections officer, instead of a trained immigration judge. While asylum seekers are not supposed to be deported unless they are first given a chance to prove to an INS asylum officer that they have a “credible fear of persecution,” mistakes have been made.¹²⁶⁷ The press and human rights organizations have documented instances of mistaken expedited removal determinations and other abuses relating to the conduct of the expedited removal process.¹²⁶⁸

Shortly before the expedited removal provisions went into effect in April 1997, the US Immigration and Naturalization Service increased its detention space and opened two large detention facilities to house asylum seekers subject to the expedited removal/mandatory detention provisions. These two facilities, both run by private contractors, are the 200-bed facility near JFK International Airport in Queens, New York, which is run by Wackenhut Corrections Corporation, and the 300-bed facility near Newark International Airport in Elizabeth, New Jersey, which is run by Correction Corporation of America. Asylum seekers are also held in other facilities across the country, including in county and local jails.

While the expedited removal provisions of the 1996 immigration law require the detention of asylum seekers during the expedited removal process, they do not prohibit parole once asylum seekers have established a credible fear of persecution and are therefore no longer subject to expedited removal proceedings.¹²⁶⁹ The authority to parole arriving asylum seekers however is entrusted to the detaining authority, the INS. If the INS denies parole, that decision cannot be appealed to an independent or judicial authority. While immigration judges can review INS custody and bond decisions with respect to various other categories of non-citizens,¹²⁷⁰ immigration judges are precluded from reviewing issues relating to the detention of “arriving” aliens, a category which includes all arriving asylum seekers.¹²⁷¹

At any time, the U.S. government data ins about 22,000 non-citizens in INS detention facilities and jails, and it has been estimated that several thousand of those detainees are asylum seekers.¹²⁷² Precise statistical information about asylum seekers, including the number of asylum seekers in detention, has long been difficult to obtain from the INS. For years, in fact, the INS has been unable to regularly provide statistical information relating to detained asylum seekers – even in the face of a federal statute requiring the INS to report these numbers to Congress.¹²⁷³

The costs of detention are tremendous. The INS detention and removal budget is now over \$1 billion. The INS reportedly spends an average of \$78 a day to detain a non-citizen. To detain an asylum seeker through his or her initial hearing before an immigration judge has been reported to cost, on the average, \$7259 for a single asylum seeker. This does not include the substantial expense of additional detention while any appeals are pending. It has been estimated that detaining asylum seekers costs taxpayers at least \$42.7 million per year.¹²⁷⁴

48,054 asylum seekers, not including dependents, applied for asylum during 2000; 18 percent were reopened applications.¹²⁷⁵ In the first nine months of 2001, 47,584 asylum cases were reported.¹²⁷⁶ The United States is a party to the 1967 Protocol Relating to the Status of Refugees.

Parole for asylum seekers, already restrictive in some areas of the U.S., seems to have become even more restrictive in the wake of September 11. Particularly troubling are reports of discriminatory parole practices. The press has documented cases in which asylum seekers from Arab or Muslim backgrounds, who would previously have been paroled prior to September 11, have been denied parole.

Additional charges of discriminatory parole practices have been leveled with respect to Haitian asylum seekers. In early December 2001, a boat bearing nearly 200 Haitian men, women and children arrived off the coast of Florida. In response, the INS has instituted a policy of denying parole to Haitian asylum seekers. A lawsuit filed in March 2002 alleges that the policy discriminates against Haitians based on their race and nationality and violates the U.S. Constitution's guarantees of due process and equal protection. The INS has admitted that this policy is designed to deter other Haitian asylum seekers from fleeing to the U.S.¹²⁷⁷

With respect to the over 1100 non-citizens detained in the wave of arrests following September 11, the press and human right organizations have documented a range of disturbing abuses including lengthy detentions without charges, denial of access to counsel, the conduct of secret hearings and abusive treatment.¹²⁷⁸ These detainees are overwhelmingly non-citizen men of Arab or Muslim background who are being held or have already been deported based on immigration violations. While the vast majority of these individuals are not asylum seekers, a few refugees have been caught up in this wave of detentions.¹²⁷⁹

Following September 11, a series of measures have been taken by the U.S. government that have deprived non-citizens of their rights. An overview of these measures is contained in a September 2002 report issued by the Lawyers Committee for Human Rights, entitled "A Year of Loss." The report is available on the Lawyers Committee's website at www.lchr.org. Among the measures that will most affect detained asylum seekers are (1) the planned transfer of the immigration service, including its detention

functions, to a new Department of Homeland Security and the gutting of the immigration appeals process, and (2) the changes to the administrative appellate process which have rendered that process meaningless in many cases, leading some asylum seekers little choice but to remain detained for longer periods while they appeal their cases to the federal courts of appeals.

Is there independent review of the detention decision? No.

There is no independent review of INS decisions to detain arriving asylum seekers. As noted above, if the INS denies parole to an arriving asylum seeker, that decision cannot be appealed to an independent or judicial authority. While immigration judges can review INS custody and bond decisions with respect to various other categories of non-citizens,¹²⁸⁰ immigration judges are precluded from reviewing issues relating to the detention of “arriving” aliens, a category which includes all arriving asylum seekers.¹²⁸¹ The U.S. government and some federal courts have taken the position that parole denials cannot be challenged in federal court as a result of changes made by a 1996 immigration law. Even prior to 1996, very few asylum seekers challenged their parole denials by filing habeas petitions in federal courts, because (1) it takes months or longer to receive a decision from a federal court rendering the effort meaningless from a practical standpoint in most cases, (2) most asylum seekers cannot afford to pay for counsel to take on federal court litigation, and (3) federal courts would generally defer to INS decisions unless the INS had failed to give a reason for the parole denial in the particular case.

Are there limits on the period of detention? No.

There is no limit on the length of time that an asylum seeker may be detained while her claim is pending. In fact, human rights organizations and news reports have documented cases of asylum seekers who have been detained for three or four years, and one recent news report uncovered that several hundred asylum seekers have been detained for more than one year.¹²⁸² In researching the U.S. immigration detention system, *The Dallas Morning News* obtained statistics revealing that over 851 non-citizens in detention had been detained for over three years, and that 361 of these detainees were asylum seekers or other detainees who had not been convicted of any crime.¹²⁸³ *The San Jose Mercury News*, in the course of conducting interviews for its award-winning series on asylum in the U.S., profiled or gathered information relating to about 56 asylum seekers who were detained for over one year before being granted asylum.¹²⁸⁴

In June 2001, the U.S. Supreme Court ruled that the detention of aliens who have received final orders of removal for a period beyond what is reasonably necessary to deport them was contrary to law. The Court, construing a particular statute, held six months to be a presumptively reasonable period. This decision involved immigrants

already present in the United States and did not reach a decision on the case of aliens detained on arrival at a U.S. airport or border. The overwhelming majority of asylum seekers detained in the United States are detained upon arrival in the country. The U.S. government has taken the position that the ruling in this case does not apply to arriving aliens, which would include arriving asylum seekers.

Is there periodic review of detention? No.

There is no periodic review of decisions to detain asylum seekers. For so-called indefinite detainees, *i.e.* an immigration detainee who has received a final order of removal (including a rejected asylum seeker) but has not been deported after three months, or six months if there has been an extension, a custody review will take place within 30 days, and once a year thereafter.

Is there access to government-funded legal aid? No.

There is no provision of federal funds for legal representation of asylum seekers.

Alternatives to detention: Despite several successful pilots, nationwide alternatives to detention have not been implemented.

The US immigration authorities contracted with the Vera Institute of Justice to conduct a pilot program to test a supervised release program which was called the “Appearance Assistance Program.” The Vera Institute’s report, issued in August 2000, reported a 93% appearance rate for asylum seekers who were screened and released through the Vera program, and a 55% cost savings. Despite this successful model, no national supervised release program has been established. In addition, the Catholic Legal Immigration Network and the Lutheran Immigration and Refugee Services have reported high appearance rates for asylum seekers released through projects that they have coordinated.

Vulnerable groups: Children who arrive without valid entry documents at U.S. borders and airports are subject to detention in the U.S. Advocacy groups have criticized the U.S.’s practices with respect to detaining children, including the procedures (which include dental and wrist examinations) by which the U.S. determines that teenagers are classified as adults and held in adult detention facilities and jails. About 5000 children have been reported to be in INS custody; many are held in juvenile jails and shelters.¹²⁸⁵ Children have also been detained in adult jails and detention facilities when the INS has mistakenly concluded that they are adults based on dental examinations – a procedure that has been widely criticized by medical experts and is no longer relied upon even by the U.S. State Department.¹²⁸⁶

END NOTES

¹ This report draws on many excellent secondary sources, particularly AMNESTY INTERNATIONAL, DETENTION OF ASYLUM SEEKERS IN THE EUROPEAN UNION (December 2000) [hereinafter AMNESTY EU REPORT 2000]; DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN CENTRAL AND EASTERN EUROPEAN COUNTRIES, *available at* <http://www.english.drc.dk/publications/> (Apr. 1999) [hereinafter DRC E. EUR. REPORT 1999]; DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000]; EUROPEAN COUNCIL ON REFUGEES AND EXILES, COUNTRY REPORTS 2001 *available at* <http://www.ecre.org/publications/countryrpt01.shtml> [hereinafter ECRE REPORT 2001]; EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES, *available at* <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001]; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION (July 2000) [hereinafter UNHCR EU REPORT 2000]; U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001]; and U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

² David Bitel, Address Before the Refugee Council of New Zealand (Mar. 27, 1999), *available at* <http://www.refugee.org.nz/council3.htm> (last accessed Aug. 29, 2002).

³ DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, POPULATION FLOWS: IMMIGRATION ASPECTS 28 (2001), *available at* http://www.dima.gov.au/statistics/publications/popflows2001/chapter2_4.pdf (last modified Feb. 2002) (last accessed Aug. 29, 2002) [hereinafter POPULATION FLOWS].

⁴ POPULATION FLOWS, *supra* note 3.

⁵ DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS, FACT SHEET 61: KING ASYLUM WITHIN AUSTRALIA (last modified Nov. 13, 2001) and FACT SHEET 64: TEMPORARY PROTECTION VISAS (last modified July 1, 2002) *available at* <http://www.immi.gov.au/facts/index.htm> (last accessed Aug. 29, 2002).

⁶ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/taxis/vtx/home/+2wwBmelFXx8wwwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5>

Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwwww/op endoc.pdf (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

⁷ FACT SHEET 61: KING ASYLUM WITHIN AUSTRALIA, *supra* note 5.

⁸ FACT SHEET 64: TEMPORARY PROTECTION VISAS, *supra* note 5.

⁹ *Id.*

¹⁰ Migration Act, 1958, §§ 189, 196 (Austl.).

¹¹ AMNESTY INTERNATIONAL AUSTRALIA, FACTSHEET 09: MANDATORY DETENTION OF ASYLUM SEEKERS, *available at* <http://www.amnesty.org.au/refugees/ref-fact09.html> (last accessed Sept. 10, 2002).

¹² AMNESTY INTERNATIONAL AUSTRALIA, FACTSHEET 03: ALTERNATIVES TO DETENTION, *available at* <http://www.amnesty.org.au/refugees/ref-fact03.html> (last accessed Sept. 10, 2002).

¹³ AMNESTY INTERNATIONAL AUSTRALIA, FACTSHEET 09: MANDATORY DETENTION OF ASYLUM SEEKERS, *available at* <http://www.amnesty.org.au/refugees/ref-fact09.html> (last accessed Sept. 10, 2002).

¹⁴ Michael Thawley, *Letter to the Editor Re: "Asylum Seekers Detained in Australia Suspend Hunger Strike,"* N.Y. TIMES, Feb. 5, 2002.

¹⁵ Detention Policy and Procedures Section, Australian Department of Immigration and Multicultural and Indigenous Affairs, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 10, 2002) (on file with Debevoise & Plimpton) [hereinafter Australian Response to LCHR Questionnaire].

¹⁶ Australian Response to LCHR Questionnaire, *supra* note 15.

¹⁷ Mitchell M. Smith, *Asylum Seekers in Australia*, 175 MED. J. AUSTRAL. 587 (2001) (citing personal communication with Department of Immigration and Multicultural Affairs, Detention Operations Branch), *available at* http://www.mja.com.au/public/issues/175_12_171201/smith/smith.html (last accessed Aug. 29, 2002).

¹⁸ *Id.*; U.N.: *Wrong to Detain Asylum Seekers*, N.Y. TIMES, Jan. 24, 2002; Becky Gaylord, *Protests by Refugees Spread, Putting Pressure on Australia to Act*, N.Y. TIMES, Jan. 24, 2002, at A6; *Heat Takes Toll on Hunger Strikers*, ASSOCIATED PRESS, Jan. 25, 2002; AUSTRALIAN HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (HREOC), *THOSE WHO'VE COME ACROSS THE SEAS: DETENTION OF UNAUTHORIZED ARRIVALS (1998)*, *available at* http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf (last accessed Aug. 29, 2002) [hereinafter HREOC I].

¹⁹ *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights*, Communication No. 560/1993: Australia, U.N. GAOR, Hum. Rts. Comm., 59th Sess., Annex, U.N. Doc. CCPR/C/59/D/560/1993 (1997).

²⁰ Zachary Steel & Derrick M. Silove, *The mental health implications of detaining asylum seekers*, 175 MED. J. AUSTRAL. 596 (2001), *available at* http://www.mja.com.au/public/issues/175_12_171201/steel/steel.html (last accessed Aug.

29, 2002); Amer Sultan & Kevin O'Sullivan, *Psychological Disturbances in Asylum Seekers Held in Long Term Detention: a Participant-Observer Account*, 175 MED. J. AUSTRAL. 593 (2001); Gaylord, *supra* note 18; *Heat Takes Toll on Hunger Strikers*, *supra* note 18.

²¹ Gaylord, *supra* note 18.

²² Bridging visas expire upon the final adjudication of the application for a Protection Visa. HREOC I, *supra* note 18, at 18 (citing Migration Act, 1958, § 73). Any non-citizen in Australia without a current visa is labeled, under the Migration Act, an “unlawful non-citizen,” and must convince the court that they were wrongly categorized as an “unlawful non-citizen” to be released from detention without a bridging visa. Migration Act §§ 13-14 (Austl.); HREOC, Submission to the Senate Legal and Constitutional References Committee Inquiry into Australia’s Refugee and Humanitarian Program, at 9, *at* http://www.hreoc.gov.au/word/human_rights/asylum_seekers/h5_2_3.doc (last visited June 26, 2002) [hereinafter HREOC II].

²³ 268 Migrations Regulations § 2.24(2); Migration Act §72(7) (providing that “The Minister does not have a duty to consider whether to make a determination under paragraph (1)(c) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or any other person, or in any other circumstances.”)

²⁴ 268 Migrations Regulations, Schedule 2, § 50.214.

²⁵ 268 Migrations Regulations, Schedule 2, § 50.212(3)(a) (modified 1996).

²⁶ Those with C Bridging Visas are granted permission to work on the basis of financial hardship, certain skills, or a declaration by the Minister regarding conditions in the home country. This visa remains valid during the asylum application and review process and for 28 days after final denial by the Refugee Review Tribunal. The asylum seeker may apply for a new Bridging Visa “C” while she applies for judicial review to the Federal Court or High Court, and this visa will remain valid until 28 days after final denial. HREOC II, *supra* note 22.

²⁷ Migration Act §72 and Migration Regulation § 2.20. Note that those with special medical needs are eligible only where a medical officer *appointed by the Immigration authorities* has determined that the non-citizen cannot properly be cared for in a detention environment (emphasis added). HREOC I, *supra* note 18 at 20. Note further that there is one exception here for persons who have managed to avoid detection by immigration authorities for more than 45 days. 268 Migration Regulations § 2.20(8) (1994). These individuals are entitled to a Bridging Visa “E,” which does not permit them to work while they apply for judicial review. Those who are caught before 45 days are eligible for a Bridging Visa “E.”

²⁸ HREOC I, *supra* note 18 at 20.

²⁹ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, INTRODUCTION OF NEW LEGISLATION, *available at* <http://www.immi.gov.au/legislation/refugee/01.htm> (last modified April 15, 2002) (last accessed Aug. 29, 2002) [hereinafter INTRODUCTION OF NEW LEGISLATION].

³⁰ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, EXCISED OFFSHORE PLACES, *available at* <http://www.immi.gov.au/legislation/refugee/02.htm> (last modified April 15, 2002) (last accessed Aug. 29, 2002) [hereinafter OFFSHORE PLACES].

³¹ OFFSHORE PLACES, *supra* note 30.

³² DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, NEW VISA REGIME, *available at* <http://www.immi.gov.au/legislation/refugee/04.htm> (last modified April 15, 2002) (last accessed Aug. 29, 2002) [hereinafter NEW VISA REGIME].

³³ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, DECLARED COUNTRIES, *available at* <http://www.immi.gov.au/legislation/refugee/03.htm> (last modified April 15, 2002) (last accessed Aug. 29, 2002) [hereinafter DECLARED COUNTRIES].

³⁴ DECLARED COUNTRIES, *supra* note 33. The Australian government acknowledges that its obligations under the Refugee Convention and the principle of *non-refoulement* apply to newly excised offshore places and declared countries, but maintains that it is fulfilling those obligations by granting the Minister for Immigration and Multicultural and Indigenous Affairs the aforementioned discretionary powers. INTRODUCTION OF NEW LEGISLATION, *supra* note 29.

³⁵ Legislation Change -12 April 2002: Migration Legislation Amendment (Transitional Movement) Act 2002, *available at* http://www.immi.gov.au/legislation/lc1204_1.htm. The only reasons for which a transitory person would be allowed into Australia are: to receive medical treatment for a condition that cannot be adequately treated in the declared country; to provide evidence in the prosecution of people smugglers; or to transit through Australia, en route to a country of origin or to a third country. All stays would in Australia would be only as long as necessary to accomplish these goals. *Id.*

³⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 110.

³⁷ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, REFUGEES ARRIVE IN AUSTRALIA FROM NAURU, *available at* http://www.immi.gov.au/media_releases/media02/d02055.htm (last visited Aug. 10, 2002).

³⁸ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, REFUGEES LEAVE MANUS FOR AUSTRALIA, *available at* http://www.minister.immi.gov.au/media_releases/media02/r02070.htm (last visited Aug. 10, 2002).

³⁹ Australian Response to LCHR Questionnaire, *supra* note 15; E-mail from Nehal Bhuta, Mallesons Stephen Jacques, to Jaya Ramji, Debevoise & Plimpton, (Mar. 20, 2002) (on file with Debevoise & Plimpton) [hereinafter Mallesons Stephen Jaques Correspondence]; E-mail from Vanessa Lesnie, Australian Human Rights and Equal Opportunity Commission (HREOC), to Suzanne Spears, Debevoise & Plimpton, (Aug. 13, 2002)(on file with Debevoise & Plimpton)[hereinafter HREOC Correspondence]; *Chu Kheng Lim v. Minister for Immigration and Ethnic Affairs* (1992) 176 CLR 1 (Austl.), *available at* <http://www.austlii.edu.au/cgi->

bin/disp.pl/au/cases/cth/high_ct/176clr1.html?query=title+%28+%22+1992+176+clr+1%22+%29 (last visited Aug. 10, 2002).

⁴⁰ Migration Act § 8A. Until October 2001, Australian courts could review a denial of certain classes of “bridging visas” to ensure that the law was applied correctly. However, they did not have the authority to order the Minister to release a particular asylum seeker or to grant a “bridging visa.” They were merely able to remit decisions displaying a legal error for reconsideration to the Minister, who would exercise his decision afresh.

Migration Act §196(3); HREOC II, *supra* note 22 at 9; HREOC I, *supra* note 18 at 21.

⁴¹ HREOC Correspondence, *supra* note 39; HREOC, Submission to the High Court of Australia in Proceeding No. S134 of 2002, Minister for Immigration and Multicultural and Indigenous Affairs and the Refugee Review Tribunal v. Ex Parte Applicants

S134/2002, *available at*

http://www.humanrights.gov.au/legal/guidelines/submission_s134.html (last visited Sept. 11, 2002).

⁴² DECLARED COUNTRIES, *supra* note 33.

⁴³ Migration Act §§ 178(2), 196(1).

⁴⁴ *A v. Australia*, Communication No. 560/1993: CCPR/C/59/D/560/1993 (Apr. 30, 1997).

⁴⁵ HREOC II, *supra* note 22, at 9.

⁴⁶ HREOC I, *supra* note 18, at 20.

⁴⁷ *Id.*; AUSTRALIAN HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (HREOC), AUSTRALIAN HUMAN RIGHTS COMMISSIONER’S 1998-1999 REVIEW ON IMMIGRATION DETENTION at 31 *available at*

http://www.hreoc.gov.au/word/human_rights/asylum_seekers/idc_review.doc (last accessed Aug. 29, 2002) [hereinafter HREOC III].

⁴⁸ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, FACT SHEET: IMMIGRATION ADVICE AND APPLICATION ASSISTANCE SCHEME, *available at* <http://www.immi.gov.au/facts/63advice.htm> (last accessed Sept. 15, 2002) [hereinafter IAAAS Fact Sheet].

⁵² HREOC Correspondence, *supra* note 39.

⁵³ *Id.*

⁵⁴ IAAAS Fact Sheet, *supra* note 51.

⁵⁵ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, FACT SHEET: MIGRATION AGENTS REGISTRATION AUTHORITY, (last modified Jul. 19, 2002), *available at* <http://www.immi.gov.au/facts/100mara.htm> (last accessed Aug. 29, 2002).

Migration agents are registered with the Migration Agents Registration Authority, a regulatory authority appointed by the Minister for Immigration and Multicultural Affairs.

⁵⁶ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁵⁷ HREOC Correspondence, *supra* note 39 (the Curtin Immigration Reception and Processing Centre (IRPC), for example, is an eight hour flight from Sydney, where the principal non-governmental and governmental refugee assistance programs are based).

⁵⁸ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁵⁹ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, UNAUTHORIZED ARRIVALS AND DETENTION—INFORMATION PAPER (Oct. 15, 2001), at 12 [hereinafter *Unauthorized Arrivals*]; DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, FACT SHEET 82: IMMIGRATION DETENTION (Mar. 24, 2000), at 1 [hereinafter *Fact Sheet 82*].

⁶⁰ *Unauthorized Arrivals*, *supra* note 59, at 12; *Fact Sheet 82*, *supra* note 59, at 1.

⁶¹ *Unauthorized Arrivals*, *supra* note 59, at 12.

⁶² *Fact Sheet 82*, *supra* note 59.

⁶³ Department of Immigration and Multicultural and Indigenous Affairs, Submission in Response to the Terms of Reference of the Human Rights and Equal Opportunity Commission's Inquiry into Children in Immigration Detention and to Issues Raised in the Background Papers, *available at* <http://www.dima.gov.au/illegals/hreoc/index.htm> (last accessed Sept. 15, 2002).

⁶⁴ *Id.*

⁶⁵ Australian Response to LCHR Questionnaire, *supra* note 15.

⁶⁶ AMNESTY INTERNATIONAL AUSTRALIA, FACTSHEET 04: CHILDREN IN IMMIGRATION DETENTION IN AUSTRALIA, *available at* <http://www.amnesty.org.au/refugees/ref-fact04.html> (last accessed Sept. 15, 2002).

⁶⁷ Human Rights and Equal Opportunity Commission, Internal e-mail communication containing numbers gathered from DIMIA forwarded to Suzanne Spears, Debevoise & Plimpton (May 2, 2002) (on file with Debevoise & Plimpton) [hereinafter HREOC II Correspondence].

⁶⁸ The Castan Centre for Human Rights Law, Monash University, *Submission to the National Inquiry into Children in Immigration Detention*, *available at* http://www.humanrights.gov.au/human_rights/children_detention/submissions/castan.html (last accessed Aug. 29, 2002) [hereinafter Castan Centre] (citing Human Rights and Equal Opportunity Commission (HREOC), *National Inquiry into Children in Immigration Detention Background Paper 1: Introduction*. [hereinafter HREOC IV] *available at* http://www.humanrights.gov.au/human_rights/children_detention/background/introduction.html (last accessed Aug. 29, 2002)).

⁶⁹ Department of Immigration and Multicultural and Indigenous Affairs, *Submission in Response to the Terms of Reference of the Human Rights and Equal Opportunity Commission's Inquiry into Children in Immigration Detention and to Issues Raised in the Background Papers*, *available at* <http://www.dima.gov.au/illegals/hreoc/index.htm> (last accessed Sept. 15, 2002) [hereinafter DIMIA Submission].

⁷⁰ *Id.*

⁷¹ DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS, FACT SHEET 65: NEW HUMANITARIAN VISA SYSTEM, *available at* <http://www.immi.gov.au/facts/65humanitarian.htm>. (last accessed June 30, 2002) [hereinafter *Fact Sheet 65*].

⁷² HREOC Correspondence, *supra* note 39.

⁷³ Australian Response to LCHR Questionnaire, *supra* note 15.

⁷⁴ *Fact Sheet 65*, *supra* note 71.

⁷⁵ Smith, *Asylum Seekers in Australia*, *supra* note 17, at 578-79.

⁷⁶ DIMIA Submission, *supra* note 69.

⁷⁷ *Id.*; Castan Centre, *supra* note 68.

⁷⁸ Notes of Conversation with Dr. Sev Ozdowski, Human Rights Commissioner of Australia, at the Lawyers' Committee for Human Rights by Suzanne Spears (New York, May 10, 2002)(on file with Debevoise & Plimpton) (Dr. Ozdowski notes that the Minister's guardianship responsibilities conflict with his power to grant visas) [Hereinafter HRCA Conversation]; HREOC Correspondence, *supra* note 39; Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁷⁹ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁸⁰ Australian Response to LCHR Questionnaire, *supra* note 15.

⁸¹ Australian Response to LCHR Questionnaire, *supra* note 15.

⁸² AMNESTY INTERNATIONAL AUSTRALIA, FACTSHEET 04, *supra* note 66.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ COMMONWEALTH OMBUDSMAN, REPORT OF AN OWN MOTION INVESTIGATION INTO THE DEPARTMENT OF MULTICULTURAL AND IMMIGRATION AFFAIRS' IMMIGRATION DETENTION CENTRES, *available at* http://www.ombudsman.gov.au/publications_information/Special_Reports/IDCMarch1.pdf (last accessed Aug. 29, 2002); *also*, COMMONWEALTH OMBUDSMAN – AUSTRALIA, ANNUAL REPORT 2000-2001, *available at* http://www.ombudsman.gov.au/publications_information/Annual_Reports?AR2000-01/ARindex.html (last accessed Aug. 29, 2002).

⁸⁶ HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION, NATIONAL INQUIRY INTO CHILDREN IN IMMIGRATION DETENTION, *available at* http://www.humanrights.gov.au/human_rights/children_detention/index.html (last accessed Aug. 29, 2002) [hereinafter CHILDREN IN IMMIGRATION DETENTION].

⁸⁷ HREOC Correspondence, *supra* note 39; *Also* Human Rights and Equal Opportunity Commission, *Submissions to the National Inquiry into Children in Immigration Detention*, *available at* http://www.humanrights.gov.au/human_rights/children_detention/submissions/index.html#legal (last accessed Aug. 29, 2002) (figures as of June 2002) [hereinafter *Submissions*].

⁸⁸ CHILDREN IN IMMIGRATION DETENTION, *supra* note 86.

⁸⁹ HREOC Correspondence, *supra* note 39; *Fact Sheet 04*, *supra* note 82.

⁹⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189.

⁹¹ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, NUMBER OF ASYLUM APPLICATIONS SUBMITTED IN 30 INDUSTRIALIZED COUNTRIES, 1992-2001, (May 31, 2002), *available at* http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem_Xx8wwwwqwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwwww/o pendoc.pdf (last accessed Aug. 29, 2002) [hereinafter *Asylum Applications Lodged in 1992-2001*]; *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁹² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189-190.

⁹³ Pam O'Toole, *Analysis: Australia's tough asylum policy*, BBC News (Jan. 24, 2002), *available at* <http://news.bbc.co.uk/1/hi/world/asia-pacific/1780365.stm> (last accessed Sept. 16, 2002).

⁹⁴ UNHCR EU 2000 REPORT, *supra* note 1, at 43.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1; UNHCR EU 2000 REPORT, *supra* note 1, at 43; DRC W. EUR. REPORT 2000, *supra* note 1, at 11.

⁹⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 11.

¹⁰⁰ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1.

¹⁰¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 16.

¹⁰² United States Department of State, HUMAN RIGHTS COUNTRY REPORTS: AUSTRIA (2001), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8223.htm> (last accessed Sept. 16, 2002) [Hereinafter DOS 2001 REPORT];

¹⁰³ DANISH REFUGEE COUNCIL, SAFE THIRD COUNTRY POLICIES IN EUROPEAN COUNTRIES, *available at* <http://www.flygtning.dk/publikationer/rapporter/safe3rd/austria/index.php#Austria> (Nov. 1997) [hereinafter DRC SAFE THIRD COUNTRY REPORT] (last accessed Sept. 16, 2002).

¹⁰⁴ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 197. The refugee office reportedly considers most of Austria's eastern neighbors—Slovenia, Hungary and the Czech Republic—to be safe third countries. *Id.*

¹⁰⁵ DRC SAFE THIRD COUNTRY REPORT, *supra* note 103.

¹⁰⁶ DOS 2001 REPORT, *supra* note 102.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* For example, asylum-applicants may be granted temporary residency rights until their cases are processed (renewals every 3 months are no longer necessary), and the legal age limit has been lowered from 19 to 18. *Id.*

¹⁰⁹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1.

¹¹⁰ *Id.*

¹¹¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 3, 16.

¹¹² ECRE EUR. STUDY 2001, *supra* note 1, at 43.

¹¹³ UNHCR EU REPORT 2000, *supra* note 1, at 38, citing Article 38 of the Higher Administrative Court Law.

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- ¹¹⁴ ECRE EUR. STUDY 2001, *supra* note 1, at 42-43.
- ¹¹⁵ ECRE EUR. STUDY 2001, *supra* note 1, at 42.
- ¹¹⁶ UNHCR EU REPORT 2000, *supra* note 1, at 38-39, 43.
- ¹¹⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 19.
- ¹¹⁸ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 198; UNHCR EU REPORT 2000, *supra* note 1, at 42.
- ¹¹⁹ UNHCR EU REPORT 2000, *supra* note 1, at 42.
- ¹²⁰ Response of the Permanent Mission of Bangladesh in Geneva, Switzerland to the LCHR Questionnaire on Detention of Asylum Seekers (Jan. 24, 2002) (on file with Debevoise & Plimpton) [hereinafter Bangladeshi Response to LCHR Questionnaire]
- ¹²¹ *Id.*
- ¹²² *Id.*
- ¹²³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 146.
- ¹²⁴ Bangladesh Code of Criminal Procedure § 61 (1898).
- ¹²⁵ United States Department of State, HUMAN RIGHTS COUNTRY REPORTS: BANGLADESH (2001), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8224.htm> (last accessed Aug. 29, 2002).
- ¹²⁶ E-mail from Sara Hossain of Interights to Zafar Sobhan, Debevoise & Plimpton (Feb. 1, 2002) (on file with Debevoise & Plimpton).
- ¹²⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 146.
- ¹²⁸ Bangladeshi Response to LCHR Questionnaire, *supra* note 120.
- ¹²⁹ Bangladeshi Response to LCHR Questionnaire, *supra* note 120.
- ¹³⁰ Bangladeshi Response to LCHR Questionnaire, *supra* note 120.
- ¹³¹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 195.
- ¹³² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 203.
- ¹³³ *Asylum Applications Lodged in 1992-2001*, *supra* note 91.
- ¹³⁴ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ¹³⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 195.
- ¹³⁶ *Id.*
- ¹³⁷ *Id.*
- ¹³⁸ *Id.*
- ¹³⁹ *Id.*
- ¹⁴⁰ AMNESTY EU REPORT 2000, *supra* note 1, at 4; DRC W. EUR. REPORT 2000, *supra* note 1, at 27.
- ¹⁴¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 27; UNHCR EU REPORT 2000, *supra* note 1, at 53.
- ¹⁴² E-mail from Gérald Gaspart, Coordination et initiatives pour réfugiés et étrangers (CIRE), to Jaya Ramji, Debevoise & Plimpton (Oct. 5, 2001) (on file with Debevoise & Plimpton) [hereinafter CIRE Correspondence].
- ¹⁴³ UNHCR EU REPORT 2000, *supra* note 1, at 45; CIRE Correspondence, *supra* note 142.
- ¹⁴⁴ AMNESTY EU REPORT 2000, *supra* note 1, at 4.

¹⁴⁵ *Id.*

¹⁴⁶ Belgian Ministry of the Interior, Immigration Department, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 18, 2002) at 1 (on file with Debevoise & Plimpton) [hereinafter Belgian Response to LCHR Questionnaire].

¹⁴⁷ *Id.*

¹⁴⁸ Suke Wolton, *Barbed Wire Europe: Conference against Immigration Detention*, 13 JOURNAL OF REFUGEE STUDIES 415, 419 (2000).

¹⁴⁹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 203.

¹⁵⁰ Wolton, *supra* note 148, at 419.

¹⁵¹ UNHCR EU REPORT 2000, *supra* note 1, at 49. OCIV and CIRE run small scale accommodation centers that provide support in kind and housing. E-mail from Kris Pollet, OCIV, to Jaya Ramji, Debevoise & Plimpton (Feb. 12, 2002) [hereinafter OCIV Correspondence].

¹⁵² Belgian Response to LCHR Questionnaire, *supra* note 146, at 5.

¹⁵³ OCIV Correspondence, *supra* note 151; USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 203.

¹⁵⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 35. This is only a possibility in the law and a measure of last resort for the government. It has not yet been applied in practice. OCIV Correspondence, *supra* note 151.

¹⁵⁵ Belgian Response to LCHR Questionnaire, *supra* note 146 at 3.

¹⁵⁶ *Id.*

¹⁵⁷ UNHCR EU REPORT 2000, *supra* note 1, at 53; Telephone Interview by Jaya Ramji with Kris Pollet, OCIV (Sept. 19, 2001) [hereinafter OCIV Interview]; *also* Belgian Response to LCHR Questionnaire, *supra* note 146, at 3.

¹⁵⁸ Belgian Response to LCHR Questionnaire, *supra* note 146, at 3.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*; UNHCR EU REPORT 2000, *supra* note 1, at 53.

¹⁶² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 203.

¹⁶³ AMNESTY EU REPORT 2000, *supra* note 1, at 4.

¹⁶⁴ UNHCR EU REPORT 2000, *supra* note 1, at 45.

¹⁶⁵ UNHCR EU REPORT 2000, *supra* note 1, at 53.

¹⁶⁶ *Id.* (reports 8 months, but is less current); DRC W. EUR. REPORT 2000, *supra* note 1, at 32; USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 204 (reports 5 months).

¹⁶⁷ AMNESTY EU REPORT 2000, *supra* note 1, at 4.

¹⁶⁸ Belgian Response to LCHR Questionnaire, *supra* note 146, at 2.

¹⁶⁹ AMNESTY EU REPORT 2000, *supra* note 1, at 4.

¹⁷⁰ Wolton, *supra* note 148, at 419.

¹⁷¹ CIRE Correspondence, *supra* note 142.

¹⁷² UNHCR EU REPORT 2000, *supra* note 1, at 53.

¹⁷³ Belgian Response to LCHR Questionnaire, *supra* note 146, at 3.

¹⁷⁴ UNHCR EU REPORT 2000, *supra* note 1, at 48.

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- ¹⁷⁵ Belgian Response to LCHR Questionnaire, *supra* note 146, at 4.
- ¹⁷⁶ OCIV Interview, *supra* note 157.
- ¹⁷⁷ ECRE EUR STUDY 2001, *supra* note 1, at 55.
- ¹⁷⁸ CIRE Correspondence, *supra* note 142. There are six detention centers in Belgium, but Vottem is the only center for which attorney access statistics are available.
- ¹⁷⁹ Wolton, *supra* note 148, at 419.
- ¹⁸⁰ Belgian Response to LCHR Questionnaire, *supra* note 146, at 6.
- ¹⁸¹ *Id.* at 6, 9.
- ¹⁸² DRC W. EUR. REPORT 2000, *supra* note 1, at 36.
- ¹⁸³ UNHCR EU REPORT 2000, *supra* note 1, at 51.
- ¹⁸⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 200.
- ¹⁸⁵ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 210.
- ¹⁸⁶ BHC Correspondence, *supra* note 197; *Asylum Applications Lodged in 1992-2001*, *supra* note 91.
- ¹⁸⁷ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ¹⁸⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 200.
- ¹⁸⁹ *Id.*
- ¹⁹⁰ *Id.*
- ¹⁹¹ *Id.* at 201.
- ¹⁹² *Id.*
- ¹⁹³ *Id.*
- ¹⁹⁴ *Id.*
- ¹⁹⁵ *Id.*
- ¹⁹⁶ E-mail from Mariana Stoyanova, Bulgarian Helsinki Committee, to Jaya Ramji, Debevoise & Plimpton (Oct. 23, 2001) (on file with Debevoise & Plimpton) [hereinafter BHC Correspondence].
- ¹⁹⁷ *Id.*
- ¹⁹⁸ DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*.
- ¹⁹⁹ *Id.*
- ²⁰⁰ *Id.*
- ²⁰¹ *Id.*
- ²⁰² DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*.
- ²⁰³ DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*.
- ²⁰⁴ International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region*, at 86, (May 25, 2001) [hereinafter IHFHR Report] available at <http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Bulgaria.pdf> (last accessed Aug. 29, 2002).
- ²⁰⁵ ECRE EUR. STUDY 2001, *supra* note 1, at 61.
- ²⁰⁶ DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*.
- ²⁰⁷ BHC Correspondence, *supra* note 197.
- ²⁰⁸ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 210; BHC Correspondence, *supra* note 197.

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- ²⁰⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 201.
- ²¹⁰ *Id.*; USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 210.
- ²¹¹ BHC Correspondence, *supra* note 197.
- ²¹² DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*; BHC Correspondence, *supra* note 197.
- ²¹³ DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*.
- ²¹⁴ DRC E. EUR. REPORT 1999, *supra* note 1, *Bulgaria*; BHC Correspondence, *supra* note 197.
- ²¹⁵ E-mail from Bonny Wong-Fortin, Department of Citizenship and Immigration Canada, to Jaya Ramji, Debevoise & Plimpton, at 1 (Feb. 1, 2002) (on file with Debevoise & Plimpton) [hereinafter CIC Correspondence]; USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 277.
- ²¹⁶ CIC Correspondence, *supra* note 215, at 1.
- ²¹⁷ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ²¹⁸ E-mail from Janet Dench, Canadian Council for Refugees, to Jaya Ramji, Debevoise & Plimpton (Nov. 6, 2001) (on file with Debevoise & Plimpton) [hereinafter Canadian Council for Refugees Correspondence]. While there are no separate statistics for asylum seekers, in fiscal year 2000/2001, Canada detained 9,138 immigrants total for an average of 21 days. CIC Correspondence, *supra* note 215, at 1.
- ²¹⁹ Catherine Gauvreau and Glynis Williams, “Detention in Canada: Are We on the Slippery Slope?” in *Refuge* vol. 20, No. 3., p. 68, May 2002. at 68. [hereinafter *Gauvreau*]
- ²²⁰ 2002/06/14 *Canada Gazette, Part II, Vol. 136, Extra*, p. 305-6.
- ²²¹ *Id.* at 306.
- ²²² *Gauvreau*, *supra* note 219, at 69.
- ²²³ Immigration and Refugee Protection Act, C. 27, 2001, § 56 [hereinafter IRPA].
- ²²⁴ IMMIGRATION AND REFUGEE BOARD OF CANADA, BACKGROUND INFORMATION, available at http://www.irb.gc.ca/en/about/processes/drp_e.htm (last accessed Aug. 29, 2002).
- ²²⁵ IRPA, *supra* note 223, at § 58(1).
- ²²⁶ *Id.* at § 58(3).
- ²²⁷ *Id.* at 2.
- ²²⁸ IRPA, *supra* note 223, at § 57.
- ²²⁹ IMMIGRATION AND REFUGEE BOARD, OTTAWA, CANADA, GUIDELINES ON DETENTION (Mar. 12, 1998) at 3, available at http://www.irb.gc.ca/en/about/legal/guidline/detrev/detrev/Index_e.htm (last accessed Aug. 29, 2002) [hereinafter IRB Detention Guidelines].
- ²³⁰ CIC Correspondence, *supra* note 215, at 3.
- ²³¹ *Id.* at 5.
- ²³² Janet Dench, speech on detention, 2000, (on file with Debevoise & Plimpton).
- ²³³ *Id.* at p. 69.
- ²³⁴ IRB website, available at <http://www.irb.gc.ca>.

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- ²³⁵ IRB Detention Guidelines, *supra* note 229 at § C. Alternatives to Detention.
- ²³⁶ “The Toronto Bail Program” on the Canada website, *available at* http://www.crime-prevention.org/english/publications/youth/mobilize/rrro_e.html (last accessed Aug. 29, 2002).
- ²³⁷ *Id.*
- ²³⁸ Ophelia Field, European Commission on Refugees and Exiles, Research Paper on Alternatives to Detention 7-8 (Sept. 1997), *available at* <http://www.ecre.org/research/alterns.doc> (last accessed Aug. 29, 2002).
- ²³⁹ *Id.* at 68.
- ²⁴⁰ *Canada Gazette Part II, Vol 136*, s. 249.
- ²⁴¹ *Id.*
- ²⁴² US STATE DEPARTMENT REPORT ON IVORY COAST 2001, §2d (March 4, 2002), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8355.htm> (last accessed Sept. 13, 2002).
- ²⁴³ *Id.*
- ²⁴⁴ Information in the remainder of this section derived from e-mail correspondence from UNHCR Abidjan to Jaya Ramji, Debevoise & Plimpton (Dec. 27, 2001) (on file with Debevoise & Plimpton).
- ²⁴⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ²⁴⁶ *Id.*
- ²⁴⁷ *Id.*
- ²⁴⁸ Letter from Permanent Mission of the Republic of Cyprus in Geneva, Switzerland, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 29, 2002) (on file with Debevoise & Plimpton) [hereinafter Cypriot Response to LCHR Questionnaire].
- ²⁴⁹ *Id.*
- ²⁵⁰ *Id.*
- ²⁵¹ *Id.*
- ²⁵² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ²⁵³ *Id.*
- ²⁵⁴ *Id.*
- ²⁵⁵ *Id.*
- ²⁵⁶ *Id.*
- ²⁵⁷ *Id.*; Cypriot Response to LCHR Questionnaire, *supra* note 248.
- ²⁵⁸ Cypriot Response to LCHR Questionnaire, *supra* note 248.
- ²⁵⁹ *Id.*
- ²⁶⁰ *Id.*
- ²⁶¹ *Id.*
- ²⁶² *Id.*
- ²⁶³ *Id.*
- ²⁶⁴ *Id.*
- ²⁶⁵ *Id.*
- ²⁶⁶ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 214.

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- ²⁶⁷ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 214.
- ²⁶⁸ *Asylum Applications Lodged in 1992-2001*, *supra* note 1.
- ²⁶⁹ *Asylum Trends in 28 Industrialized Countries*, *supra* note 1.
- ²⁷⁰ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 214.
- ²⁷¹ *Id.*
- ²⁷² *Id.*
- ²⁷³ *Id.*
- ²⁷⁴ *Id.*
- ²⁷⁵ *Id.*
- ²⁷⁶ Pavel Tychtl, *Conflict Between European Integration and International Human Rights Obligations in the Shaping of Asylum Policies in Central and Eastern Europe, Country Study: The Czech Republic*, at 8-9 (unpublished manuscript on file with Debevoise & Plimpton).
- ²⁷⁷ *Id.*
- ²⁷⁸ Pavel Tychtl, *Conflict Between European Integration and International Human Rights Obligations in the Shaping of Asylum Policies in Central and Eastern Europe, Country Study: The Czech Republic*, at 8-9 (unpublished manuscript on file with Debevoise & Plimpton).
- ²⁷⁹ DRC E. EUR. REPORT 1999, *supra* note 1, *Czech Republic*.
- ²⁸⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Czech Republic* at 18-21
- ²⁸¹ DRC E. EUR. REPORT 1999, *supra* note 1, *Czech Republic*.
- ²⁸² DRC E. EUR. REPORT 1999, *supra* note 1, *Czech Republic*.
- ²⁸³ ECRE EUR. STUDY 2001, *supra* note 1, at 69.
- ²⁸⁴ DRC E. EUR. REPORT 1999, *supra* note 1, *Czech Republic* at 13, 22.
- ²⁸⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 191.
- ²⁸⁶ AMNESTY EU REPORT 2000, *supra* note 1, at 6.
- ²⁸⁷ Peter Clasen Toft, Head of Section, Danish Immigration Service, International Division, Response to LCHR Questionnaire on Detention of Asylum Seekers, at 1 (Feb. 15. 2002) (on file with Debevoise & Plimpton) [hereinafter Danish Response to LCHR Questionnaire].
- ²⁸⁸ Danish Response to LCHR Questionnaire, *supra* note 287, at 1.
- ²⁸⁹ Danish Response to LCHR Questionnaire, *supra* note 287, at 1.
- ²⁹⁰ *Asylum Trends in 28 Industrialized Countries*, *supra* note 1.
- ²⁹¹ UNHCR EU REPORT 2000, *supra* note 1, at 54.
- ²⁹² AMNESTY EU REPORT 2000, *supra* note 1, at 5.
- ²⁹³ Danish Response to LCHR Questionnaire, *supra* note 287, at 2-3; Aliens (Consolidation) Act §§ 36(1), 37(3), 53(a)(3) (2001).
- ²⁹⁴ Danish Response to LCHR Questionnaire, *supra* note 287, at 3; Aliens (Consolidation) Act § 35(1).
- ²⁹⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 49-50.
- ²⁹⁶ UNHCR EU REPORT 2000, *supra* note 1, at 63.

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- ²⁹⁷ Danish Response to LCHR Questionnaire, *supra* note 287, at 3; Aliens (Consolidation) Act § 36(3).
- ²⁹⁸ Danish Response to LCHR Questionnaire, *supra* note 287, at 4; Aliens (Consolidation) Act § 34(2).
- ²⁹⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 53-54.
- ³⁰⁰ UNHCR EU REPORT 2000, *supra* note 1, at 64.
- ³⁰¹ Danish Response to LCHR Questionnaire, *supra* note 287, at 2.
- ³⁰² DRC W. EUR. REPORT 2000, *supra* note 1, at 49.
- ³⁰³ E-mail from Louise Juelskjaer, Danish Refugee Council, to Jaya Ramji, Debevoise & Plimpton (Nov. 7, 2001) (on file with Debevoise & Plimpton) [hereinafter Danish Refugee Council Correspondence].
- ³⁰⁴ *Id.*
- ³⁰⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 47.
- ³⁰⁶ Danish Response to LCHR Questionnaire, *supra* note 287, at 2.
- ³⁰⁷ UNHCR EU REPORT 2000, *supra* note 1, at 63.
- ³⁰⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 49; UNHCR EU REPORT 2000, *supra* note 1, at 64.
- ³⁰⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 48; UNHCR EU REPORT 2000, *supra* note 1, at 59.
- ³¹⁰ ECRE EUR. STUDY 2001, *supra* note 1, at 84-85.
- ³¹¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 45, 48.
- ³¹² ECRE EUR. STUDY 2001, *supra* note 1, at 84.
- ³¹³ Danish Response to LCHR Questionnaire, *supra* note 287, at 4-5; Aliens (Consolidation) Act § 34(1).
- ³¹⁴ Danish Response to LCHR Questionnaire, *supra* note 287, at 5; UNHCR EU REPORT 2000, *supra* note 1, at 63.
- ³¹⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 48, 55.
- ³¹⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ³¹⁷ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 75.
- ³¹⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 54.
- ³¹⁹ E-mail from Dr. Barbara Harrell-Bond, American University in Cairo, to Jaya Ramji, Debevoise & Plimpton (Jan. 16, 2002) (on file with Debevoise & Plimpton) [hereinafter Amer. Univ. in Cairo Correspondence].
- ³²⁰ *Id.*
- ³²¹ *Id.*
- ³²² *Id.*
- ³²³ *Id.*
- ³²⁴ *Id.*
- ³²⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 68.
- ³²⁶ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 220.
- ³²⁷ *Asylum Applications Lodged in 1992-2001*, *supra* note 1.
- ³²⁸ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

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- ³²⁹ E-mail from Sari Sirva, Refugee Advice Centre, Finland, to Jaya Ramji, Debevoise & Plimpton (Dec. 4, 2001) (on file with Debevoise & Plimpton).
- ³³⁰ DRC W. EUR. REPORT 2000, *supra* note 1, at 71.
- ³³¹ UNHCR EU REPORT 2000, *supra* note 1, at 71.
- ³³² DRC W. EUR. REPORT 2000, *supra* note 1, at 71.
- ³³³ MINISTRY OF INTERIOR, GOVERNMENT DECISION-IN-PRINCIPLE ON IMMIGRATION AND REFUGEE POLICY PROGRAMME, 8. DETENTION OF ALIENS (adopted Oct. 1997) (on file with Debevoise & Plimpton).
- ³³⁴ E-mail from Sari Sirva, Refugee Advice Centre, Finland, to Jaya Ramji, Debevoise & Plimpton (Feb. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Refugee Advice Centre Correspondence].
- ³³⁵ UNHCR EU REPORT 2000, *supra* note 1, at 68.
- ³³⁶ DRC W. EUR. REPORT 2000, *supra* note 1, at 74-75.
- ³³⁷ UNHCR EU REPORT 2000, *supra* note 1, at 69.
- ³³⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 74.
- ³³⁹ UNHCR EU REPORT 2000, *supra* note 1, at 74.
- ³⁴⁰ Letter from Marjo Waismaa, Senior Adviser, Ministry of the Interior, Finland, to Jaya Ramji, Debevoise & Plimpton (Jan. 14, 2002) (on file with Debevoise & Plimpton) [hereinafter Ministry of the Interior Correspondence].
- ³⁴¹ Refugee Advice Centre Correspondence (Feb. 13, 2002), *supra* note 334.
- ³⁴² Ministry of the Interior Correspondence, *supra* note 340, at 2; Refugee Advice Centre Correspondence (Feb. 13, 2002), *supra* note 334.
- ³⁴³ DRC W. EUR. REPORT 2000, *supra* note 1, at 71.
- ³⁴⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 71.
- ³⁴⁵ Refugee Advice Centre Correspondence (Feb. 13, 2002), *supra* note 334.
- ³⁴⁶ Refugee Advice Centre Correspondence (Feb. 13, 2002), *supra* note 334; Ministry of the Interior Correspondence, *supra* note 340, at 2; DRC W. EUR. REPORT 2000 at 71.
- ³⁴⁷ ECRE EUR. STUDY 2001, *supra* note 1, at 104; UNHCR EU REPORT 2000, *supra* note 1, at 67.
- ³⁴⁸ ECRE EUR. STUDY 2001, *supra* note 1, at 105.
- ³⁴⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 70; UNHCR EU REPORT 2000, *supra* note 1, at 67-68.
- ³⁵⁰ DRC W. EUR. REPORT 2000, *supra* note 1, at 70, 75.
- ³⁵¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 86.
- ³⁵² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 222.
- ³⁵³ *Asylum Applications Lodged in 1992-2001*, *supra* note 91.
- ³⁵⁴ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ³⁵⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 196.
- ³⁵⁶ *Id.*
- ³⁵⁷ *Id.*
- ³⁵⁸ AMNESTY EU REPORT 2000, *supra* note 1, at 6. Amnesty International has reported that asylum seekers have been harassed and mistreated in the airport holding areas and

nearby hotels. UNHCR EU REPORT 2000, *supra* note 1, at 73. Asylum seekers may be detained in ports, train stations, or airports. When the hotel at Charles de Gaulle is at capacity, asylum seekers have been forced to sleep in the police station located inside the airport terminal.

³⁵⁹ UNHCR EU REPORT 2000, *supra* note 1, at 74-5 and 83. A negative decision under the accelerated procedure may be appealed to the Appeals Board for Refugees.

³⁶⁰ DRC W. EUR. REPORT 2000, *supra* note 1, at 94.

³⁶¹ UNHCR EU REPORT 2000, *supra* note 1, at 79-80.

³⁶² DRC W. EUR. REPORT 2000, *supra* note 1, at 85; UNHCR EU REPORT 2000, *supra* note 1, at 73.

³⁶³ Decree of 27 May 1982 on the conditions of entry into France and the Ordinance of 2 November 1945 on the conditions of entry and residence of foreigners; DRC W. EUR. REPORT 2000, *supra* note 1, at 85.

³⁶⁴ UNHCR EU REPORT 2000, *supra* note 1, at 73.

³⁶⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 91.

³⁶⁶ DRC W. EUR. REPORT 2000, *supra* note 1, at 91-92.

³⁶⁷ AMNESTY EU REPORT 2000, *supra* note 1, at 6.

³⁶⁸ UNHCR EU REPORT 2000, *supra* note 1, at 73.

³⁶⁹ ECRE EUR. STUDY 2001, *supra* note 1, at 117.

³⁷⁰ ECRE EUR. STUDY 2001, *supra* note 1, at 117.

³⁷¹ ECRE EUR. STUDY 2001, *supra* note 1, at 117.

³⁷² UNHCR EU REPORT 2000, *supra* note 1, at 82.

³⁷³ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 226.

³⁷⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 199.

³⁷⁵ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

³⁷⁶ UNHCR EU REPORT 2000, *supra* note 1, at 90.

³⁷⁷ AMNESTY EU REPORT 2000, *supra* note 1, at 7.

³⁷⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 108.

³⁷⁹ AMNESTY EU REPORT 2000, *supra* note 1, at 7-8.

³⁸⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 199.

³⁸¹ *Id.*

³⁸² *Id.* at 200.

³⁸³ ECRE REPORT 2001, *supra* note 1, at 85-87.

³⁸⁴ UNHCR EU REPORT 2000, *supra* note 1, at 85, 87.

³⁸⁵ *Id.* At 94; DRC W. EUR. REPORT 2000, *supra* note 1, at 108, 115.

³⁸⁶ UNHCR EU REPORT 2000, *supra* note 1, at 94.

³⁸⁷ *Id.* At 90; DRC W. EUR. REPORT 2000, *supra* note 1, at 115-16.

³⁸⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 115, 118.

³⁸⁹ UNHCR EU REPORT 2000, *supra* note 1, at 95.

³⁹⁰ AMNESTY EU REPORT 2000, *supra* note 1, at 7.

³⁹¹ E-mail from Dr. Holger Hoffman, Rechtsanwalt, to Jaya Ramji, Debevoise & Plimpton, (Jan. 18, 2002) (on file with Debevoise & Plimpton) [hereinafter Rechtsanwalt Correspondence].

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ UNHCR EU REPORT 2000, *supra* note 1, at 95-96.

³⁹⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 108.

³⁹⁹ UNHCR EU REPORT 2000, *supra* note 1, at 86.

⁴⁰⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 200.

⁴⁰¹ AMNESTY EU REPORT 2000, *supra* note 1, at 7.

⁴⁰² *Id.*

⁴⁰³ Rechtsanwalt Correspondence, *supra* note 391 (estimates that within 3 months 90% of deportations are carried out).

⁴⁰⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 112.

⁴⁰⁵ UNHCR EU REPORT 2000, *supra* note 1, at 95.

⁴⁰⁶ Rechtsanwalt Correspondence, *supra* note 391 (citing Section 114f of Civil Procedure Act).

⁴⁰⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 110-11.

⁴⁰⁸ UNHCR EU REPORT 2000, *supra* note 1, at 89.

⁴⁰⁹ Rechtsanwalt Correspondence, *supra* note 391.

⁴¹⁰ *Id.*

⁴¹¹ UNHCR EU REPORT 2000, *supra* note 1, at 92.

⁴¹² DRC W. EUR. REPORT 2000, *supra* note 1, at 111.

⁴¹³ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 230.

⁴¹⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 186-7.

⁴¹⁵ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁴¹⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 187.

⁴¹⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 126-128.

⁴¹⁸ UNHCR EU REPORT 2000, *supra* note 1, at 104.

⁴¹⁹ Human Right Watch Letter, *Third Periodic Report of Greece(due 1997)* (Apr. 23, 2001), available at

http://213.74.176.138/issues/Greece/Third_Periodic_Report_of_Greece.htm (last accessed Aug. 29, 2002).

⁴²⁰ Letter to E.U. Heads of State, *supra* note 422

⁴²¹ USCR WORLD REFUGEE SURVEY 2002), *supra* note 1, at 187-8.

⁴²² Human Rights Watch Letter, *E.U.: Protect the Rights of Migrants and Asylum Seekers in Seville Policy Proposals* (June 13, 2002), available at

<http://www.hrw.org/press/2002/06/eu-ltr0613.htm> (last accessed Aug. 29, 2002) [hereinfter Letter to E.U. Heads of State]

⁴²³ Amnesty International, Report 2002, ‘Greece’, available at <http://web.amnesty.org/web/ar2002.nsf/eur/Greece!Open> (last accessed Aug. 27, 2002) [hereinafter Amnesty 2002 Greece].

⁴²⁴ ECRE REPORT 2001, *supra* note 1, at 97.

⁴²⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 132.

⁴²⁶ UNHCR EU REPORT 2000, *supra* note 1, at 104.

⁴²⁷ *Id.* at 101-102; DRC W. EUR. REPORT 2000, *supra* note 1, at 132.

⁴²⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 133-34.

⁴²⁹ E-mail from Erika Kalantzi, lawyer working with UNHCR in Athens, Greece to Hessam Kalantar, Debevoise and Plimpton (Aug. 2, 2002) (on file with Debevoise & Plimpton)[hereinafter Athens Correspondence (Aug. 2, 2002)].

⁴³⁰ DRC W. EUR. REPORT 2000, *supra* note 1, at 130.

⁴³¹ E-mail from Erika Kalantzi, lawyer working with UNHCR in Athens, Greece to Jaya Ramji, Debevoise and Plimpton (Jan. 16, 2002) (on file with Debevoise & Plimpton)[hereinafter Athens Correspondence (Jan. 16, 2002)].

⁴³² DRC W. EUR. REPORT 2000, *supra* note 1, at 127.

⁴³³ *Id.* at 126, 130.

⁴³⁴ Human Rights Watch, *Urgent Concerns: Condition of Detention for Foreigners in Greece* (Dec. 2000), available at <http://www.hrw.org/background/eca/greece-detention-bck.htm> (last accessed Aug. 29, 2002) [hereinafter *Urgent Concerns*].

⁴³⁵ Athens Correspondence (Jan. 16, 2002), *supra* note 431 (according to Article 44 para. 3 of Aliens Law 2910/2001).

⁴³⁶ Amnesty 2002 Greece, *supra* note 423.

⁴³⁷ Athens Correspondence (Jan. 16, 2002), *supra* note 431.

⁴³⁸ Athens Correspondence (Jan 16, 2002 and August 2, 2002), *supra* notes 429 and 431 (according to Article 243 para. 6 of the Code of the Administrative Review).

⁴³⁹ *Urgent Concerns*, *supra* note 434.

⁴⁴⁰ *Id.*

⁴⁴¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 129.

⁴⁴² Athens Correspondence (Aug. 2, 2002), *supra* note 429.

⁴⁴³ UNCHR EU. REPORT 2000, *supra* note 1, at 103.

⁴⁴⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 130, 132-34.

⁴⁴⁵ Information in this section was generously provided by Guillermo Saenz De Tejada Herra, Director de Asuntos Juridicos y Tratados of the Ministerio de Relaciones Exteriores de la Republica de Guatemala; Stephanie Hochstetter, Second Secretary, Permanent Mission of Guatemala to the United Nations in Geneva; and Ubaldo Villatoro, a lawyer with the Asociacion de Apoyo Integral in Guatemala, whose unpublished manuscript, *Detention of Asylum Seekers in Guatemala* [hereinafter *Detention in Guatemala*] is on file with Debevoise & Plimpton.

⁴⁴⁶ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 288.

⁴⁴⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 260.

⁴⁴⁸ *Id.*

⁴⁴⁹ Reply to Request for Information, from Ubaldo Villatoro, Asociacion de Apoyo Integral to Mateo Taussig-Rubbo, Debevoise & Plimpton (Dec. 3, 2001) (on file with Debevoise & Plimpton) [hereinafter Villatoro Correspondence].

⁴⁵⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 260.

⁴⁵¹ *Id.*

⁴⁵² Villatoro Correspondence, *supra* note 449.

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 61.

⁴⁶⁰ UNHCR, 2001 UNHCR Population Statistics Provisional, Table 15, *available* at <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=statistics> (last accessed Sept. 16, 2002)

⁴⁶¹ Human Rights Watch, GUINEA: REFUGEES STILL AT RISK: CONTINUING REFUGEE PROTECTION CONCERNS IN GUINEA (Vol. 13, No. 5 (A), July 2001) *available* at <http://www.hrw.org/reports/2001/guinea/> (last accessed Sept. 16, 2002) [hereinafter Guinea: Refugees Still At Risk].

⁴⁶² U.S. Department of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2000 (2001), *available* at <http://www.state.gov/g/drl/rls/hrrpt/2000/af/806.htm> (last accessed Sept. 16, 2002)

⁴⁶³ UNHCR, GUINEA: MASSAKOUNDOU DETAINEES RELEASED (March 29, 2001), *available* at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+vwwBm2evEudwwwwbwwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFq3t1oDnwamnBwoDnn5Dzmxwwwwww/opendoc.htm> (last accessed Sept. 16, 2002)

⁴⁶⁴ GUINEA: REFUGEES STILL AT RISK, *supra* note 461.

⁴⁶⁵ *Id.*

⁴⁶⁶ E-mail from Souleymane Bah, ORGANISATION GUINÉENNE DES DROITS DE L'HOMME (OGDH) and WEST AFRICAN REFUGEES AND INTERNALLY DISPLACED PERSONS NETWORK (WARIPNET) to Anna Mecagni, Lawyers Committee for Human Rights (August 29, 2002 08:07 EST) (on file with Debevoise & Plimpton) [hereinafter OGCH & WARIPNET Correspondence].

⁴⁶⁷ GUINEA: REFUGEES STILL AT RISK, *supra* note 461.

⁴⁶⁸ Amnesty International, GUINEA AND SIERRA LEONE: NO PLACE OF REFUGE (October 2001), *available* at <http://web.amnesty.org/ai.nsf/Index/AFR050062001?OpenDocument&of=COUNTRIES\SIERRA+LEONE> (last accessed Sept. 16, 2002) [hereinafter No Place of Refuge].

⁴⁶⁹ OGCH & WARIPNET Correspondence, *supra* note 466.

⁴⁷⁰ *Id.*

⁴⁷¹ NO PLACE OF REFUGE, *supra* note 468.

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- ⁴⁷² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 232.
- ⁴⁷³ *Id.* at 188.
- ⁴⁷⁴ *Id.*
- ⁴⁷⁵ *Id.*
- ⁴⁷⁶ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ⁴⁷⁷ DRC E. EUR. REPORT 1999, *supra* note 1, *Hungary*; USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189.
- ⁴⁷⁸ DRC E. EUR. REPORT 1999, *supra* note 1, *Hungary*.
- ⁴⁷⁹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 232.
- ⁴⁸⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Hungary*.
- ⁴⁸¹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 232.
- ⁴⁸² ECRE EUR. STUDY 2001, *supra* note 1, at 148.
- ⁴⁸³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189.
- ⁴⁸⁴ ECRE REPORT 2001, *supra* note 1, at 112.
- ⁴⁸⁵ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 232-233.
- ⁴⁸⁶ DRC E. EUR. REPORT 1999, *supra* note 1, *Hungary*.
- ⁴⁸⁷ E-mail from Barbara Pohárnok, Hungarian Helsinki Committee, to Emily O'Connor, Debevoise & Plimpton (September 17, 2002) (on file with Debevoise & Plimpton) [hereinafter HHC Correspondence].
- ⁴⁸⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189.
- ⁴⁸⁹ HHC Correspondence, *supra* note 487.
- ⁴⁹⁰ *Id.*
- ⁴⁹¹ *Id.*
- ⁴⁹² *Id.*
- ⁴⁹³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188; ECRE REPORT 2001, *supra* note 1, at 107; HHC Correspondence, *supra* note 487.
- ⁴⁹⁴ DRC E. EUR. REPORT 1999, *supra* note 1, *Hungary*.
- ⁴⁹⁵ ECRE EUR. STUDY 2001, *supra* note 1, at 149.
- ⁴⁹⁶ DRC E. EUR. REPORT 1999, *supra* note 1, *Hungary*.
- ⁴⁹⁷ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, p. 133; U.N. High Commissioner for Refugees, *Statistics of Individual Cases in Indonesia as per December 31, 2000* (on file with Debevoise & Plimpton).
- ⁴⁹⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 121-122; U.N. High Commissioner for Refugees, *Statistics of Individual Cases in Indonesia as per December 31, 2001* (on file with Debevoise & Plimpton).
- ⁴⁹⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126.
- ⁵⁰⁰ U.N. High Commissioner for Refugees, *Statistics of Individual Cases in Indonesia as per June 30, 2002* (on file with Debevoise & Plimpton).
- ⁵⁰¹ E-mail from Richard Danziger, International Organization for Migration, to Emily O'Connor, Debevoise & Plimpton (Aug. 8, 2002) (on file with Debevoise & Plimpton) [hereinafter IOM Correspondence].
- ⁵⁰² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 122.

⁵⁰³ E-mail from Sigit Riyanto, U.N. High Commissioner for Refugees, to Emily O'Connor, Debevoise & Plimpton (July 10, 2002) (on file with Debevoise & Plimpton) [hereinafter UNHCR Correspondence (July 10, 2002)].

⁵⁰⁴ E-mail from Sigit Riyanto, U.N. High Commissioner for Refugees, to Emily O'Connor, Debevoise & Plimpton (Aug. 1, 2002) (on file with Debevoise & Plimpton) [hereinafter UNHCR Correspondence (Aug. 1, 2002)]; UNHCR Correspondence (July 10, 2002), *supra* note 503.

⁵⁰⁵ U.S. Committee for Refugees, *Sea Change: Australia's New Approach for Asylum Seekers*, at 14 (Feb. 2002) [hereinafter Sea Change Report] available at <http://www.refugees.org/pub/australia2.cfm> (last accessed Aug. 29, 2002).

⁵⁰⁶ IOM Correspondence, *supra* note 501.

⁵⁰⁷ Sea Change Report, *supra* note 505, at 12, 14.

⁵⁰⁸ *Id.* at 12.

⁵⁰⁹ *Id.* at 13.

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² UNHCR Correspondence (July 10, 2002), *supra* note 503.

⁵¹³ Sea Change Report, *supra* note 505, at 14; IOM Correspondence, *supra* note 501.

⁵¹⁴ IOM Correspondence, *supra* note 501.

⁵¹⁵ Tim Morris, *Australia and Asylum: No Longer "Land of the Fair Go"?*, Forced Migration Review, August 8, 2000, at 1.

⁵¹⁶ IOM Correspondence, *supra* note 501.

⁵¹⁷ UNHCR Correspondence (Aug. 1, 2002), *supra* note 504.

⁵¹⁸ UNHCR Correspondence (July 10, 2002), *supra* note 503.

⁵¹⁹ Sea Change Report, *supra* note 505 at 13.

⁵²⁰ UNHCR Correspondence (Aug. 1, 2002), *supra* note 504.

⁵²¹ *Id.*

⁵²² *Id.*; IOM Correspondence, *supra* note 501.

⁵²³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 167.

⁵²⁴ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 175.

⁵²⁵ *Id.*

⁵²⁶ E-mail from UNHCR, to Tasha Lackman, Lawyers Committee for Human Rights (July 29, 2002) (on file with Debevoise and Plimpton). All the answers to the following questions are drawn from this correspondence.

⁵²⁷ UNHCR Global Appeal, 2002, *Islamic Republic of Iran* at 146, available at <http://www.unhcr.ch/pubs/fdrs/ga2002/irn.pdf> (last accessed Aug. 29, 2002).

⁵²⁸ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 235.

⁵²⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 190.

⁵³⁰ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁵³¹ As amended by section 11(1) of the Immigration Act (1999) and section 9 of the Illegal Immigrants (Trafficking) Act (2000). E-mail from Dug Cubie, Irish Refugee

Council, to Min Jung Lee, Debevoise & Plimpton (Nov. 29, 2001) (on file with Debevoise & Plimpton) [hereinafter Irish Refugee Council Correspondence].

⁵³² UNHCR EU REPORT 2000, *supra* note 1, at 110.

⁵³³ Irish Refugee Council Correspondence, *supra* note 531; Mission Permanente de l'Irlande à Genève, Response to LCHR Questionnaire on Detention of Asylum Seekers (Mar. 22, 2002) at Annex I (on file with Debevoise & Plimpton) [hereinafter Irish Response to LCHR Questionnaire].

⁵³⁴ Irish Refugee Council Correspondence, *supra* note 531.

⁵³⁵ E-mail from Noel Waters, Reception & Integration Agency, to Min Jung Lee, Debevoise & Plimpton (May 21, 2002) (on file with Debevoise & Plimpton) [hereinafter Reception & Integration Agency Correspondence].

⁵³⁶ Amnesty International (Irish Section), DETENTION OF ASYLUM SEEKERS (APRIL 2001), available at <http://www.amnesty.ie.act.refug.det.shtml> (last accessed Sept. 8, 2002) [hereinafter DETENTION OF ASYLUM SEEKERS].

⁵³⁷ Irish Response to LCHR Questionnaire, *supra* note 533.

⁵³⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 146.

⁵³⁹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 235; UNHCR EU 2000 REPORT, *supra* note 1, at 100, 108.

⁵⁴⁰ Irish Response to LCHR Questionnaire, *supra* note 533; Reception & Integration Agency Correspondence, *supra* note 535.

⁵⁴¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 157.

⁵⁴² Irish Response to LCHR Questionnaire, *supra* note 533.

⁵⁴³ *Id.*

⁵⁴⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 151; *also* IRISH REFUGEE COUNCIL, GUIDE TO THE REFUGEE ACT 1996 (AS AMENDED) 10 (2000) (citing Refugee Act 1996, §9(10)(a)).

⁵⁴⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 151; *also* IRISH REFUGEE COUNCIL, GUIDE TO THE REFUGEE ACT 1996 (AS AMENDED) (citing Refugee Act 1996, §9(10)(b)(i)); Brian Ingoldsby, *The Refugee Act and Its Amendments* 6 (Jan. 2001) (briefing paper, presented by the Department of Justice, Equality and Law Reform at the Bar Council Seminar).

⁵⁴⁶ Irish Response to LCHR Questionnaire, *supra* note 533.

⁵⁴⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 151.

⁵⁴⁸ Ingoldsby, *The Refugee Act and Its Amendments*, *supra* note 545, at 6.

⁵⁴⁹ Irish Response to LCHR Questionnaire, *supra* note 533.

⁵⁵⁰ DRC W. EUR. REPORT 2000, *supra* note 1, at 152.

⁵⁵¹ Immigration Act 1999, as amended in Illegal Immigrants (Trafficking) Act (2000), §5(6)(b)(iii).

⁵⁵² Ingoldsby, *The Refugee Act and Its Amendments*, *supra* note 545, at 6; Irish Response to LCHR Questionnaire, *supra* note 533; DETENTION OF ASYLUM SEEKERS, *supra* note 536.

⁵⁵³ DRC W. EUR. REPORT 2000, *supra* note 1, at 150.

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- ⁵⁵⁴ Irish Refugee Council Correspondence, *supra* note 531.
- ⁵⁵⁵ Irish Response to LCHR Questionnaire, *supra* note 533.
- ⁵⁵⁶ DRC W. EUR. REPORT 2000, *supra* note 1, at 156; Reception & Integration Agency Correspondence, *supra* note 535.
- ⁵⁵⁷ Irish Response to LCHR Questionnaire, *supra* note 533.
- ⁵⁵⁸ UNHCR EU 2000 REPORT, *supra* note 1, at 109.
- ⁵⁵⁹ Section 8(5) of the Refugee Act (1996) (as amended), and the provisions of the Child Care Act (1991).
- ⁵⁶⁰ DRC W. EUR. REPORT 2000, *supra* note 1, at 156.
- ⁵⁶¹ ECRE REPORT 2001, *supra* note 1, at 119.
- ⁵⁶² *Id.*
- ⁵⁶³ *Id.* The Irish Refugee Council does not legally represent any asylum seekers during the asylum process, but offers legal advice and advocates for best practices. Irish Refugee Council Correspondence, *supra* note 531.
- ⁵⁶⁴ E-mail from Anat Ben-Dor, Public Interest Law Resource Center, Tel Aviv University, to Zeina Mobassaleh, Lawyers Committee for Human Rights, (July 31, 2002 and Aug. 7, 2002) (on file with LCHR) [hereinafter Resource Center Correspondence].
- ⁵⁶⁵ Fax from Tuvia Israeli, Deputy Permanent Representative of the Permanent Mission of Foreign Affairs and of Israel to the United Nations Office in Geneva, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 10, 2002) (on file with Debevoise & Plimpton) [hereinafter Israeli Response to LCHR Questionnaire].
- ⁵⁶⁶ Resource Center Correspondence, *supra* note 564.
- ⁵⁶⁷ *Id.*
- ⁵⁶⁸ *Id.*
- ⁵⁶⁹ E-mail from Sigal Rozen, Hotline for Migrant Workers, to Zeina Mobassaleh, Lawyers Committee for Human Rights, (July 31, 2002) (on file with LCHR) [hereinafter Hotline Correspondence]
- ⁵⁷⁰ Hotline Correspondence, *supra* note 569.
- ⁵⁷¹ *Id.*
- ⁵⁷² Resource Center Correspondence, *supra* note 564.
- ⁵⁷³ *Id.*
- ⁵⁷⁴ Israeli Response to LCHR Questionnaire, *supra* note 565 .
- ⁵⁷⁵ Based on a Hotline report surveying 270 male detainees, or thirteen percent of male detainees arrested, between November 8, 2001 (when the 1952 Entry into Israel Law went into effect) and April 8, 2002.
- ⁵⁷⁶ Based on a Hotline report surveying 72 detained women, or thirty percent of female detainees arrested, between November 8, 2001 and April 15, 2002.
- ⁵⁷⁷ Resource Center Correspondence, *supra* note 564.
- ⁵⁷⁸ Hotline Correspondence, *supra* note 569.
- ⁵⁷⁹ Resource Center Correspondence, *supra* note 564.
- ⁵⁸⁰ Hotline Correspondence, *supra* note 569.
- ⁵⁸¹ Resource Center Correspondence, *supra* note 564.

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ Hotline Correspondence, *supra* note 569.

⁵⁸⁷ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 236.

⁵⁸⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 191.

⁵⁸⁹ Jesuit Refugee Service, *New Law On Immigration and Asylum Approved In Italy: Strongly Criticised By JRS* (July 15, 2002), available at <http://www.jesref.org/dispatch/en02/de207a.htm> (last accessed Sept. 8, 2002) [hereinafter *New Law on Immigration and Asylum*].

⁵⁹⁰ E-mail from Germana Monaldi, Italian Jesuit Service, to Min Jung Lee, Debevoise & Plimpton (June 3, 2002) [hereinafter Italian Jesuit Service Correspondence (June 3, 2002)].

⁵⁹¹ *New Law on Immigration and Asylum*, *supra* note 589 (“The law makes access to the right to asylum seeker difficult and introduces measures such as mandatory detention as well as making it virtually impossible to appeal a negative decision on an asylum application”); Jesuit Refugee Service, *Italy Alert 04-03-02*, available at <http://www.jesref.org/alerts/itlatest.htm> (“In practice [the new law] will make the right to asylum virtually impossible to exercise”) (last accessed May 20, 2002); *Press Release*, Fondazione Centro Astalli (May 15, 2002) (criticism of new law by Fr. Vittoria Liberti SJ, Superior of the Italian Jesuits) (on file with Debevoise & Plimpton); Italian Jesuit Service Correspondence (June 3, 2002), *supra* note 590 (explaining that another reason NGOs have criticized the proposed bill is because the asylum portion of the bill is not comprehensive as only two articles deal with asylum procedure); E-mail from Germana Monaldi, Italian Jesuit Service, to Min Jung Lee, Debevoise & Plimpton (Nov. 15, 2001) (on file with Debevoise & Plimpton) [hereinafter Italian Jesuit Service Correspondence (Nov. 15, 2001)].

⁵⁹² *New Law on Immigration and Asylum*, *supra* note 589.

⁵⁹³ ECRE EUR. STUDY 2001, *supra* note 1, at 180. These centers are mostly run by NGOs such as the Italian Red Cross or churches in contract with the Ministry of the Interior. *Id.*; also UNHCR EU REPORT 2000, *supra* note 1, at 111, 114.

⁵⁹⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 166-67.

⁵⁹⁵ Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 590.

⁵⁹⁶ ECRE EUR. STUDY 2001, *supra* note 1, at 180; UNHCR EU REPORT 2000, *supra* note 1, at 116.

⁵⁹⁷ Italian Jesuit Service Correspondence (June 3, 2002), *supra* note 590.

⁵⁹⁸ *Id.*; see also ECRE Report 2001, *supra* note 1, at 132.

⁵⁹⁹ ECRE EUR. STUDY 2001, *supra* note 1, at 180; DRC W. EUR. REPORT 2000, *supra* note 1, at 172.

⁶⁰⁰ ECRE EUR. STUDY 2001, *supra* note 1, at 180; DRC W. EUR. REPORT 2000, *supra* note 1, at 169.

⁶⁰¹ ECRE EUR. STUDY 2001, *supra* note 1, at 180; DRC W. EUR. REPORT 2000, *supra* note 1, at 169.

⁶⁰² ECRE EUR. STUDY 2001, *supra* note 1, at 180; DRC W. EUR. REPORT 2000, *supra* note 1, at 168. This appeal may last for years, and appealing asylum seekers, who are not provided with residence permits, are simply tolerated. Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 591.

⁶⁰³ Italian Jesuit Service Correspondence (June 3, 2002), *supra* note 590.

⁶⁰⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 168.

⁶⁰⁵ ECRE EUR. STUDY 2001, *supra* note 1, at 180.

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.*

⁶⁰⁸ Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 591.

⁶⁰⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 169; *also* Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 591.

⁶¹⁰ ECRE EUR. STUDY 2001, *supra* note 1, at 180.

⁶¹¹ *Id.*

⁶¹² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 139.

⁶¹³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126; *Japan: Asylum*, Migration News, April 2002, Vol. 9, No. 4, *available at* http://migration.ucdavis.edu/mn/Archive_MN/apr_2002-16mn.html (last accessed May 17, 2002).

⁶¹⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126.

⁶¹⁵ Interview with Eri Ishikawa, Japan Association for Refugees, in Geneva, Switzerland (Sept. 24, 2001) [hereinafter Japan Association for Refugees Interview].

⁶¹⁶ IMMIGRATION CONTROL AND REFUGEE RECOGNITION ACT (provisional translation), Japan Ministry of Justice, *available at* <http://www.moj.go.jp/ENGLISH/IB/ib-20.html> (last accessed Aug. 29, 2002); USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126.

⁶¹⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126.

⁶¹⁸ AMNESTY INTERNATIONAL, WELCOME TO JAPAN? (May 17, 2002), *available at* <http://web.amnesty.org/ai.nsf/Index/asa220022002?open&0f=COUNTRIES\JAPAN> (last accessed Aug. 29, 2002).

⁶¹⁹ *Id.*

⁶²⁰ Japan Association for Refugees Interview, *supra* note 615.

⁶²¹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126.

⁶²² AMNESTY INTERNATIONAL, WELCOME TO JAPAN?, *supra* note 618; USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 126-27.

⁶²³ AMNESTY INTERNATIONAL, WELCOME TO JAPAN?, *supra* note 618.

⁶²⁴ *Id.*

⁶²⁵ *Id.*

⁶²⁶ Japan Association for Refugees Interview, *supra* note 615.

⁶²⁷ IMMIGRATION CONTROL AND REFUGEE RECOGNITION ACT, Art. 41, *supra* note 616.

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- ⁶²⁸ Japan Association for Refugees Interview, *supra* note 615.
- ⁶²⁹ *Id.*
- ⁶³⁰ *Id.*
- ⁶³¹ JAPAN LEGAL AID SOCIETY, The Official Homepage of the Japan Legal Aid Society, visited March 11, 2002, <http://www.jlaa.or.jp/English/system/index.html>.
- ⁶³² Japan Association for Refugees Interview, *supra* note 615.
- ⁶³³ *Id.*
- ⁶³⁴ AMNESTY INTERNATIONAL, WELCOME TO JAPAN?, *supra* note 618.
- ⁶³⁵ Japan Association for Refugees Interview, *supra* note 615.
- ⁶³⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 65.
- ⁶³⁷ *Id.*; E-mail from Muthee Kiunga, Refugee Consortium of Kenya (Legal/Referral Programme) to Jaya Ramji, Debevoise & Plimpton (Nov. 13, 2001) (on file with Debevoise & Plimpton) [hereinafter RCK Correspondence (Nov. 13, 2001)]
- ⁶³⁸ RCK Correspondence (Nov. 13, 2001), *supra* note 637.
- ⁶³⁹ E-mail from Roselyn Mungai-Mwatha, Refugee Consortium of Kenya (Legal/Referral Programme) to Min Jung Lee, Debevoise & Plimpton (Sept. 10, 2002) (on file with Debevoise & Plimpton) [hereinafter RCK Correspondence (Sept. 10, 2002)].
- ⁶⁴⁰ RCK Correspondence (Nov. 13, 2001), *supra* note 637.
- ⁶⁴¹ *Id.*
- ⁶⁴² RCK Correspondence (Sept. 10, 2002), *supra* note 639.
- ⁶⁴³ *Id.*
- ⁶⁴⁴ RCK Correspondence (Nov. 13, 2001), *supra* note 637.
- ⁶⁴⁵ *Id.*
- ⁶⁴⁶ RCK Correspondence (Sept. 10, 2002), *supra* note 639.
- ⁶⁴⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 117.
- ⁶⁴⁸ *Id.*; Interview with Erica Kang, Good Friends Centre for Peace, Human Rights, and Refugees, in Geneva, Switzerland (Sept. 27, 2001) [hereinafter Good Friends Centre Interview].
- ⁶⁴⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 117.
- ⁶⁵⁰ *Id.*; Good Friends Centre Interview, *supra* note 648.
- ⁶⁵¹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 117.
- ⁶⁵² Good Friends Centre Interview, *supra* note 648.
- ⁶⁵³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 117.
- ⁶⁵⁴ Good Friends Centre Interview, *supra* note 648.
- ⁶⁵⁵ *Id.*
- ⁶⁵⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 118.
- ⁶⁵⁷ *Id.* at 194.
- ⁶⁵⁸ *Id.*
- ⁶⁵⁹ Good Friends Centre Interview, *supra* note 648.
- ⁶⁶⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 193.
- ⁶⁶¹ *Id.*
- ⁶⁶² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 238.

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- ⁶⁶³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at ___.
- ⁶⁶⁴ *Id.*
- ⁶⁶⁵ E-mail from Migle Cirbaite, Legal Assistance Project to Refugees, Lithuanian Red Cross, to Min Jung Lee, Debevoise & Plimpton (Nov. 23, 2001) (on file with Debevoise & Plimpton) [hereinafter Lithuanian Red Cross Correspondence (Nov. 23, 2001)].
- ⁶⁶⁶ *Id.*
- ⁶⁶⁷ ECRE EUR. STUDY 2001, *supra* note 1, at 199.
- ⁶⁶⁸ ECRE EUR. STUDY 2001, *supra* note 1, at 198-99.
- ⁶⁶⁹ ECRE EUR. STUDY 2001, *supra* note 1, at 199; Lithuanian Red Cross Correspondence (Nov. 23, 2001), *supra* note 665.
- ⁶⁷⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Lithuania*; USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 239; ECRE EUR. STUDY 2001, *supra* note 1, at 199.
- ⁶⁷¹ E-mail from Migle Cirbaite, Legal Assistance Project to Refugees, Lithuanian Red Cross, to Min Jung Lee, Debevoise & Plimpton (Sept. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Lithuanian Red Cross Correspondence (Sept. 13, 2002)].
- ⁶⁷² DRC E. EUR. REPORT 1999, *supra* note 1, *Lithuania*.
- ⁶⁷³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 193; ECRE REPORT 2001, *supra* note 1, at 140.
- ⁶⁷⁴ ECRE REPORT 2001, *supra* note 1, at 142-43.
- ⁶⁷⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 193.
- ⁶⁷⁶ Lithuanian Red Cross Correspondence (Nov. 23, 2001), *supra* note 665.
- ⁶⁷⁷ DRC E. EUR. REPORT 1999, *supra* note 1, *Lithuania*; USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 239; ECRE EUR. STUDY 2001, *supra* note 1, at 199.
- ⁶⁷⁸ Fax from Ilona Petrikiene, Second Secretary, Migration Department of Lithuania, Mission Permanente de la Lituanie Aupres de l'Office Des Nations Unies a Geneve, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 9, 2002) (on file with Debevoise & Plimpton) [hereinafter Lithuanian Response to LCHR Questionnaire].
- ⁶⁷⁹ Lithuanian Red Cross Correspondence (Sept. 13, 2002), *supra* note 671.
- ⁶⁸⁰ Lithuanian Red Cross Correspondence (Nov. 23, 2001), *supra* note 665.
- ⁶⁸¹ *Id.*
- ⁶⁸² *Id.*
- ⁶⁸³ *Id.*; Lithuanian Response to LCHR Questionnaire, *supra* note 678.
- ⁶⁸⁴ *Id.* However, such funding covers only the small part of the expenses of the Legal Assistance Project for Refugees and Asylum Seekers of the Lithuanian Red Cross. Lithuanian Red Cross Correspondence (Sept. 13, 2002), *supra* note 671.
- ⁶⁸⁵ *Id.*; Lithuanian Response to LCHR Questionnaire, *supra* note 678.
- ⁶⁸⁶ *Id.*
- ⁶⁸⁷ ECRE EUR. STUDY 2001, *supra* note 1, at 200.
- ⁶⁸⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 193; Lithuanian Response to LCHR Questionnaire, *supra* note 678.
- ⁶⁸⁹ ECRE REPORT 2001, *supra* note 1, at 141.
- ⁶⁹⁰ Lithuanian Red Cross Correspondence (Nov. 23, 2001), *supra* note 665.

⁶⁹¹ UNITED STATES DEPARTMENT OF STATE, HUMAN RIGHTS COUNTRY REPORTS: LUXEMBOURG (2000), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/index.cfm?docid=866> (last accessed Aug. 29, 2002).

⁶⁹² UNHCR, The Official Homepage of UNHCR, *visited* March 11, 2002, <http://www.unhcr.ch>.

⁶⁹³ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁶⁹⁴ UNHCR EU REPORT 2000 at 122; DRC W. EUR. REPORT 2000, *supra* note 1, at 180; E-mail from Agnes Rausch, Caritas, Luxembourg, to Jaya Ramji, Debevoise & Plimpton (Aug. 28, 2001) (on file with Debevoise & Plimpton) [hereinafter Caritas Correspondence (Aug. 28, 2001)].

⁶⁹⁵ Caritas Correspondence (Aug. 28, 2001), *supra* note 694.

⁶⁹⁶ ECRE REPORT 2001, *supra* note 1, at 148.

⁶⁹⁷ UNHCR EU REPORT 2000, *supra* note 1, at 120, 123.

⁶⁹⁸ Caritas Correspondence (Aug. 28, 2001), *supra* note 694.

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

⁷⁰¹ E-mail from Agnes Rausch, Caritas, Luxembourg, to Min Jung Lee, Debevoise & Plimpton (Feb. 21, 2002) (on file with Debevoise & Plimpton) [hereinafter Caritas Correspondence (Feb. 21, 2002)].

⁷⁰² Caritas Correspondence (Aug. 28, 2001), *supra* note 694.

⁷⁰³ *Id.*

⁷⁰⁴ DRC W. EUR. REPORT 2000, *supra* note 1, at 187.

⁷⁰⁵ Caritas Correspondence (Aug. 28, 2001), *supra* note 694.

⁷⁰⁶ UNHCR EU REPORT 2000, *supra* note 1, at 122.

⁷⁰⁷ Caritas Correspondence (Feb. 21, 2002), *supra* note 701.

⁷⁰⁸ Caritas Correspondence (Aug. 28, 2001), *supra* note 694.

⁷⁰⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 180.

⁷¹⁰ Caritas Correspondence (Aug. 28, 2001), *supra* note 694.

⁷¹¹ UNHCR EU REPORT 2000, *supra* note 1, at 123.

⁷¹² DRC W. EUR. REPORT 2000, *supra* note 1, at 184.

⁷¹³ *Id.*

⁷¹⁴ *Id.* at 183.

⁷¹⁵ UNHCR EU REPORT 2000, *supra* note 1, at 120.

⁷¹⁶ DRC W. EUR. REPORT 2000, *supra* note 1, at 190.

⁷¹⁷ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 139.

⁷¹⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 127 (this 57,500 figure consists almost entirely of Filipino Muslims in Sabah who fled to Malaysia in the 1970-80's).

⁷¹⁹ 1953/1969 Immigration Act (Act 155), § 55; Human Rights Watch, *Living in Limbo: Burmese Rohingyas in Malaysia* 29 (2000) [hereinafter *Living in Limbo*].

⁷²⁰ *Living in Limbo*, *supra* note 719, at 28-29.

⁷²¹ 1953/1969 Immigration Act (Act 155), § 56(2).

⁷²² *Living in Limbo*, *supra* note 719, at 30, 44; E-mail from Zama Coursen-Neff, Human Rights Watch, to Min Jung Lee, Debevoise & Plimpton (Nov. 2, 2001) (on file with Debevoise & Plimpton) [hereinafter Human Rights Watch Correspondence (Nov. 2, 2001)]. Non-Rohingya asylum seekers and refugees are at risk of being deported to their country of origin. Although UNHCR sometimes grants them refugee status and resettles them, they may still be arrested and deported before resettlement. Malaysia only departs to countries it has agreements with. E-mail from Zama Coursen-Neff, Human Rights Watch, to Min Jung Lee, Debevoise & Plimpton (Feb. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Human Rights Watch Correspondence (Feb. 13, 2002)].

⁷²³ *Living in Limbo*, *supra* note 719, at 44.

⁷²⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 128.

⁷²⁵ *Id.* at 129.

⁷²⁶ *Living in Limbo*, *supra* note 719, at 33-41.

⁷²⁷ *Id.* at 29.

⁷²⁸ 1953/1969 Immigration Act (Act 155), § 35.

⁷²⁹ *Id.* § 34(1).

⁷³⁰ *Living in Limbo*, *supra* note 719, at 30.

⁷³¹ Human Rights Watch Correspondence (Nov. 2, 2001), *supra* note 722.

⁷³² *Living in Limbo*, *supra* note 719, at 30.

⁷³³ *Id.* at 41-42.

⁷³⁴ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 289.

⁷³⁵ For a critical review of the 1992 regulations, Susan Gzesh, *So Close to the United States, So Far From God*, USCR World Refugee Survey 1995, available at http://www.refugees.org/world/articles/mexicanlaw_wrs95.htm (last accessed Aug. 29, 2002).

⁷³⁶ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 289-90. E-mail from Gretchen Kuhner, Sin Fronteras, to Min Jung Lee, Debevoise & Plimpton (Feb. 25, 2002) [hereinafter Sin Fronteras Correspondence (Feb. 25, 2002)].

⁷³⁷ Gretchen Kuhner, *Detention of Asylum Seekers in Mexico*, 20 REFUGEE 58, 60 (May 2002).

⁷³⁸ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 58.

⁷³⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 262.

⁷⁴⁰ *Id.*

⁷⁴¹ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 60.

⁷⁴² Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 60.

⁷⁴³ Melanie Nezer, *The Puebla Process: U.S. Migration Controls Move South of the Border*, USCR WORLD REFUGEE SURVEY 1999, available at http://www.refugees.org/world/articles/wrs99_migrationcontrols.htm (last accessed Aug. 29, 2002).

⁷⁴⁴ E-mail from Gretchen Kuhner, Sin Fronteras, to Marjorie Menza, Debevoise & Plimpton (June 22, 2001) (on file with Debevoise & Plimpton). [hereinafter Sin Fronteras

Correspondence (June 22, 2001)]; Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 60.

⁷⁴⁵ Sin Fronteras Correspondence (Feb. 25, 2002), *supra* note 736.

⁷⁴⁶ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 61.

⁷⁴⁷ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 61.

⁷⁴⁸ Sin Fronteras Correspondence (Feb. 25, 2002), *supra* note 736.

⁷⁴⁹ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 61.

⁷⁵⁰ Sin Fronteras Correspondence (June 22, 2001), *supra* note 744.

⁷⁵¹ Sin Fronteras, *Notes on Asylum Seekers in Detention in Mexico*, I.A.P., Section IIE (Sept. 2001).

⁷⁵² Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 61.

⁷⁵³ Sin Fronteras Correspondence (June 22, 2001), *supra* note 744.

⁷⁵⁴ Sin Fronteras Correspondence (June 22, 2001), *supra* note 744.

⁷⁵⁵ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 737, at 60.

⁷⁵⁶ Sin Fronteras Correspondence (Feb. 25, 2002), *supra* note 736.

⁷⁵⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1 at 110.

⁷⁵⁸ *Id.*

⁷⁵⁹ *Id.*

⁷⁶⁰ *Id.*

⁷⁶¹ HREOC Correspondence, *supra* note 39.

⁷⁶² *Decisions handed down on Nauru and Manus Island*, NEWSLETTER (Refugee Council of Australia, Glebe, NSW, Austl.), April 2002, available at http://www.refugeecouncil.org.au/html/news_and_events/news/newsletter_current.html#decision (last accessed Sept. 16, 2002).

⁷⁶³ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁷⁶⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1 at 110.

⁷⁶⁵ HREOC II Correspondence, *supra* note 67.

⁷⁶⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 143; TIBET JUSTICE CENTER, TIBET'S STATELESS NATIONALS: TIBETAN REFUGEES IN NEPAL 47 (June 2002), available at <http://www.tibetjustice.org> (last accessed Sept. 13, 2002) [hereinafter TIBET JUSTICE CENTER REPORT].

⁷⁶⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 143.

⁷⁶⁸ TIBET JUSTICE CENTER REPORT, *supra* note 766, at 47.

⁷⁶⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 143; Human Rights Watch, *Bhutan/Nepal: A Solution For Bhutanese Refugees In Nepal?* (Feb. 27, 2001), available at <http://www.hrw.org/press/2001/02/bhutan0227.htm> (last accessed Aug. 29, 2002).

⁷⁷⁰ TIBET JUSTICE CENTER REPORT, *supra* note 766, at 59-60.

⁷⁷¹ *Id.* at 65.

⁷⁷² *Id.* at 89-90.

⁷⁷³ *Id.* at 93-99.

⁷⁷⁴ *Id.* at 110-11.

⁷⁷⁵ *Id.* at 114-17.

⁷⁷⁶ E-mail from Robert Sloane, Tibet Justice Center to Min Jung Lee, Debevoise & Plimpton (Sept. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Tibet Justice Center Correspondence].

⁷⁷⁷ *Id.*

⁷⁷⁸ TIBET JUSTICE CENTER REPORT, *supra* note 766 at 114,

⁷⁷⁹ Tibet Justice Center Correspondence, *supra* note 776.

⁷⁸⁰ *Id.* at 114.

⁷⁸¹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 240.

⁷⁸² UNHCR, The Official Homepage of UNHCR, *visited* March 11, 2002, <http://www.unhcr.ch>.

⁷⁸³ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁷⁸⁴ *Dutch Getting Tough On Asylum Seekers*, BBC News (June 21, 2002), *available at* <http://news.bbc.co.uk/1/hi/world/Europe/2057726.stm> (last accessed Sept. 10, 2002).

⁷⁸⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 198; Dutch Refugee Council, *Asylum Procedure*, *available at* <http://www.vluchtelingenwerk.nl/en/sections> (last accessed Sept. 10, 2002) [hereinafter *Asylum Procedure*].

⁷⁸⁶ DRC W. EUR. REPORT 2000, *supra* note 1, at 204-06.

⁷⁸⁷ *Asylum Procedure*, *supra* note 785.

⁷⁸⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 198.

⁷⁸⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 209; ECRE EUR. STUDY 2001, *supra* note 1, at 216-17.

⁷⁹⁰ *Id.* at 214.

⁷⁹¹ ECRE EUR. STUDY 2001, *supra* note 1, at 217; DRC W. EUR. REPORT 2000, *supra* note 1, at 209.

⁷⁹² *Id.* at 214.

⁷⁹³ *Id.*; UNHCR EU REPORT 2000, *supra* note 1, at 129.

⁷⁹⁴ UNHCR EU REPORT 2000, *supra* note 1, at 129-30, 132.

⁷⁹⁵ ECRE REPORT 2001, *supra* note 1, at 160-61.

⁷⁹⁶ Aliens Act § 94 (2000) ; ECRE EUR. STUDY 2001, *supra* note 1, at 217.

⁷⁹⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 204, 209.

⁷⁹⁸ UNHCR EU REPORT 2000, *supra* note 1, at 132-33.

⁷⁹⁹ *Id.*

⁸⁰⁰ Aliens Act § 94 (2000).

⁸⁰¹ DRC W. EUR. REPORT 2000, *supra* note 1, at 204.

⁸⁰² UNHCR EU REPORT 2000, *supra* note 1, at 127.

⁸⁰³ UNHCR EU REPORT 2000, *supra* note 1, at 128.

⁸⁰⁴ ECRE EUR. STUDY 2001, *supra* note 1, at 217.

⁸⁰⁵ *Id.* at 218.

⁸⁰⁶ UNHCR EU REPORT 2000, *supra* note 1, at 131.

⁸⁰⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 198.

⁸⁰⁸ ECRE EUR. STUDY 2001, *supra* note 1, at 218; *Asylum Procedure*, *supra* note 785.

⁸⁰⁹ *Asylum Procedure*, *supra* note 785.

⁸¹⁰ Immigration Amendment Act 1999, § 40. The new Part VIA of the Immigration Act 1987 came into force on 1 October 1999: Immigration Amendment Act 1999, § 1(3). These provisions are to be read with the Immigration (Refugee Processing) Regulations 1999 (SR 1999/285).

⁸¹¹ Letter from Hon. Lianne Dalziel, Minister of Immigration of New Zealand, to Suzanne Spears, Debevoise & Plimpton (July 8, 2002) (on file with Debevoise & Plimpton) [hereinafter New Zealand Response to LCHR Questionnaire].

⁸¹² Immigration Act 1987, §§ 129E to 129M.

⁸¹³ *Id.*

⁸¹⁴ *Id.*

⁸¹⁵ Rodger Haines QC, *An Overview of Refugee Law in New Zealand: Background and Current Issues*, Inaugural Meeting of the International Association of Refugee Law Judges (IARLJ) Australia/New Zealand Chapter (10 March 2000).

⁸¹⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 111.

⁸¹⁷ Haines, *supra* note 815.

⁸¹⁸ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁸¹⁹ Haines, *supra* note 815.

⁸²⁰ Haines, *supra* note 815.

⁸²¹ Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).

⁸²² Immigration Amendment Act 1999, § 128(B).

⁸²³ Immigration Amendment Act 1999, § 128(5).

⁸²⁴ Helen Tunnah, *Judge Reserves Asylum Finding*, THE NEW ZEALAND HERALD, June 20, 2002.

⁸²⁵ HUMAN RIGHTS FOUNDATION OF AOTEAROA NEW ZEALAND AND THE REFUGEE COUNCIL OF NEW ZEALAND, INC., FREEDOM'S RAMPARTS ON THE SEA: THE DETENTION OF ASYLUM SEEKERS IN NEW ZEALAND (May 2002), *available at* http://www.humanrights.co.nz/docs/Freedoms_Ramparts.doc (last accessed Aug. 29, 2002) [hereinafter Ramparts].

⁸²⁶ Statement of Claim (Application for Judicial Review), In the Matter of the Immigration Act 1987 and In the Matter of Sections 21, 22 and 23 of the New Zealand Bill of Rights Act 1990, Between the Refugee Council of New Zealand and the Human Rights Foundation, and the Attorney-General (Dec. 2001), *available at* http://www.humanrights.co.nz/docs/Refugee_Proceedings.doc (last accessed Aug. 29, 2002) [hereinafter Statement of Claim In the Matter of the Immigration Act].

⁸²⁷ The categories of people outlined in section 7(1) of the Immigration Act 1987, include: (a) people who have been convicted and sentenced to imprisonment for 5 years or more at any time, or have been convicted and sentenced to imprisonment for 12 months or more in the past 10 years; (b) people against whom a removal order is in force; (c) people who have been deported from any country, including New Zealand; (d) people who are likely to commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975; (e) people likely to facilitate, or engage in, an act of terrorism; (f)

people who may have engaged in, or have claimed responsibility for, an act of terrorism inside or outside New Zealand; (g) people who are members of, or adhere to, a group engaged in, or that has claimed responsibility for, an act of terrorism inside or outside New Zealand; (h) people who are a threat to security or public order in New Zealand; and (i) people who are members of, or adhere to, any organisation which has criminal objectives or is engaged in criminal activities, and whose presence in New Zealand would constitute a threat to the public interest or public order. NEW ZEALAND IMMIGRATION SERVICE, website *available at* http://www.immigration.govt.nz/operations_manual/3492.htm#o3492 (lasted accessed Sept. 15, 2002).

⁸²⁸ Statement of Claim In the Matter of the Immigration Act, *supra* note 826.

⁸²⁹ *Id.*

⁸³⁰ Tunnah, *supra* note 824.

⁸³¹ *Id.*

⁸³² Ramparts, *supra* note 825.

⁸³³ Statement of Claim In the Matter of the Immigration Act, *supra* note 826.

⁸³⁴ In the Matter of the Immigration Act, *supra* note 833; *also* Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).

⁸³⁵ *Id.*

⁸³⁶ *Id.*

⁸³⁷ Refugee Council of New Zealand Inc v Attorney-General (High Court Auckland, M1881-AS01, 27 June 2002, Baragwanath J) - Supplementary Judgment of Baragwanath J, *available at* http://www.humanrights.co.nz/docs/Refugee_v_Atorney-General_Judgment.doc (last accessed Aug. 29, 2002) [hereinafter Supplementary Judgment]; *also* Refugee Council of New Zealand Inc v Attorney-General (High Court Auckland, M1881-AS01, 31 May 2002, Baragwanath J) - Interim Judgment of Baragwanath J, *available at* http://www.humanrights.co.nz/docs/Interim_Decision.doc (last accessed Aug. 29, 2002) [hereinafter Interim Decision].

⁸³⁸ Interim Decision, *supra* note 837.

⁸³⁹ *Id.*

⁸⁴⁰ Supplementary Judgment, *supra* note 837.

⁸⁴¹ Helen Tunnah, *Refugee Case Will Open Way to Claims*, THE NEW ZEALAND HERALD, June 28, 2002.

⁸⁴² *Refugee case appeal*, THE NEW ZEALAND HERALD, July 1, 2002.

⁸⁴³ New Zealand Response to LCHR Questionnaire, *supra* note 811.

⁸⁴⁴ Helen Tunnah, *Treat Refugees Better Says UN*, THE NEW ZEALAND HERALD, Aug. 14, 2002.

⁸⁴⁵ Hon. Phil Goff, *Govt passes tough new anti people-smuggling legislation*, MEDIA STATEMENT, June 12, 2002, *summary available at* <http://www.refugee.org.nz/news.htm#12%20June%202002a>.

⁸⁴⁶ Interim Decision, *supra* note 837.

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- ⁸⁴⁷ Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).
- ⁸⁴⁸ *Concluding Observations of the Human Rights Committee: New Zealand* ¶11, U.N. Doc. CCPR/CO/75/NZL (July 17, 2002) [hereinafter UNHRC Conclusions].
- ⁸⁴⁹ *Id.*
- ⁸⁵⁰ UNHRC Conclusions, *supra* note 848 at 10; Tunnah, *supra* note 844.
- ⁸⁵¹ Refugee Council of New Zealand, *Submission to the Foreign Affairs, Defense and Trade Committee on the Transnational Organized Crime Bill* (May 2002).
- ⁸⁵² Immigration Act, § 128.
- ⁸⁵³ Immigration Act, § 128(B).
- ⁸⁵⁴ *D v. Minister of Immigration* 2 NZLR 673 (1991).
- ⁸⁵⁵ Asher Davidson, *Is Detention Defensible?: Article 31(2) of the Refugee Convention and Its Implementation in New Zealand*, (June 2000), *available at* <http://www.refugee.org.nz/davidson.htm> (last accessed Aug. 29, 2002) [hereinafter *Is Detention Defensible?*].
- ⁸⁵⁶ Immigration Act, § 128(13), now repealed.
- ⁸⁵⁷ Immigration Act, § 128B(5)(a), now repealed.
- ⁸⁵⁸ Immigration Act, § 128(13B)(a) as substituted by Immigration Amendment Act 1999 §37(2).
- ⁸⁵⁹ Immigration Act, § 128B(5)(a) as substituted by Immigration Amendment Act 1999 §39(1).
- ⁸⁶⁰ Ramparts, *supra* note 825.
- ⁸⁶¹ *Id.*
- ⁸⁶² Hon. Phil Goff, *Govt passes tough new anti people-smuggling legislation*, MEDIA STATEMENT, June 12, 2002, *summary available at* <http://www.refugee.org.nz/news.htm#12%20June%202002a>.
- ⁸⁶³ *Id.*
- ⁸⁶⁴ New Zealand Response to LCHR Questionnaire, *supra* note 811.
- ⁸⁶⁵ *Is Detention Defensible*, *supra* note 855.
- ⁸⁶⁶ UNHCR submissions on Immigration Amendment Bill, read into the record by Lianne Dalziel, House of Representatives, *Hansard*, Vol. 576, 15635, *as cited by Is Detention Defensible?*, *supra* note 855, at ¶99, note 123.
- ⁸⁶⁷ New Zealand Response to LCHR Questionnaire, *supra* note 811.
- ⁸⁶⁸ Ramparts, *supra* note 825.
- ⁸⁶⁹ *Id.*
- ⁸⁷⁰ New Zealand Response to LCHR Questionnaire, *supra* note 811; *also* Legal Services Agency website at <http://www.lsa.govt.nz> (last accessed Sept. 15, 2002).
- ⁸⁷¹ Ramparts, *supra* note 825.
- ⁸⁷² *Id.*
- ⁸⁷³ *Id.*
- ⁸⁷⁴ *Id.*
- ⁸⁷⁵ *Id.*

⁸⁷⁶ New Zealand Response to LCHR Questionnaire, *supra* note 811.

⁸⁷⁷ *Id.*

⁸⁷⁸ *Id.*

⁸⁷⁹ *Id.*

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.*

⁸⁸² *Id.*

⁸⁸³ *Id.*

⁸⁸⁴ Ramparts, *supra* note 825.

⁸⁸⁵ Ramparts, *supra* note 825 (citing a 10/24/01 Meeting with the Minister).

⁸⁸⁶ *Id.*

⁸⁸⁷ *Id.*

⁸⁸⁸ *Id.*

⁸⁸⁹ *Id.*

⁸⁹⁰ *Id.*

⁸⁹¹ *Id.*

⁸⁹² *Id.*

⁸⁹³ *Id.*

⁸⁹⁴ *Id.*

⁸⁹⁵ *Id.*

⁸⁹⁶ *Id.*

⁸⁹⁷ *Id.*

⁸⁹⁸ *Id.*

⁸⁹⁹ All information in this section is drawn from a conversation held on July 31, 2002 between a legal advisor at Pastoral Movilidad Humana/Caritas, a Managua based organization that works with detainees, and Tasha Lackman, Lawyers Committee for Human Rights.

⁹⁰⁰ Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=STATISTICS&id=3ae6bc7f80&page=statistics> and at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=STATISTICS&id=3ae6bc852c&page=statistics> (last accessed Aug. 29, 2002).

⁹⁰¹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 242.

⁹⁰² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 199.

⁹⁰³ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁹⁰⁴ ECRE EUR. STUDY 2001, *supra* note 1, at 227.

⁹⁰⁵ E-mail from Anita Vardoy, Adviser, Royal Norwegian Ministry of Local Government and Regional Development, Department of Migration, to Emily O'Connor, Debevoise & Plimpton (Feb. 20, 2002) (on file with Debevoise & Plimpton) [hereinafter Royal Norwegian Ministry Correspondence].

⁹⁰⁶ Letter from Inger Egeberg, Deputy Director General, and Anita Vardoy, Adviser, Royal Norwegian Ministry of Local Government and Regional Development,

Department of Migration, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 25, 2002) (on file with Debevoise & Plimpton) [hereinafter Norwegian Response to LCHR Questionnaire].

⁹⁰⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 234.

⁹⁰⁸ ECRE REPORT 2001, *supra* note 1, at 179, 180.

⁹⁰⁹ Royal Norwegian Ministry Correspondence, *supra* note 905.

⁹¹⁰ *Id.*; Norwegian Response to LCHR Questionnaire, *supra* note 906.

⁹¹¹ ECRE EUR. STUDY 2001, *supra* note 1, at 227; Royal Norwegian Ministry Correspondence, *supra* note 905.

⁹¹² DRC W. EUR. REPORT 2000, *supra* note 1, at 229.

⁹¹³ *Id.*; Royal Norwegian Ministry Correspondence, *supra* note 905.

⁹¹⁴ E-mail from Rune Berglund Steen, Norwegian Organization for Asylum Seekers (NOAS), to Emily O'Connor, Debevoise & Plimpton (Nov. 20, 2001) (on file with Debevoise & Plimpton) [hereinafter NOAS Correspondence].

⁹¹⁵ ECRE EUR. STUDY 2001, *supra* note 1, at 227.

⁹¹⁶ DRC W. EUR. REPORT 2000, *supra* note 1, at 228; NOAS Correspondence, *supra* note 914.

⁹¹⁷ E-mail from Rune Berglund Steen, Norwegian Organization for Asylum Seekers (NOAS), to Emily O'Connor, Debevoise & Plimpton (Nov. 20, 2001) (on file with Debevoise & Plimpton) [hereinafter NOAS Correspondence].

⁹¹⁸ ECRE EUR. STUDY 2001, *supra* note 1, at 227.

⁹¹⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 233; Royal Norwegian Ministry Correspondence, *supra* note 905.

⁹²⁰ Norwegian Response to LCHR Questionnaire, *supra* note 906.

⁹²¹ ECRE EUR. STUDY 2001, *supra* note 1, at 227-228.

⁹²² Royal Norwegian Ministry Correspondence, *supra* note 905.

⁹²³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 144.

⁹²⁴ U.S. Committee for Refugees, PAKISTAN: AFGHAN REFUGEES SHUNNED AND SCORNE D 5 (Sept. 2001) [hereinafter USCR PAKISTAN REPORT].

⁹²⁵ Human Rights Watch, CLOSED DOOR POLICY: AFGHAN REFUGEES IN PAKISTAN AND IRAN (Vol. 14 Feb. 2002) at 19 [hereinafter CLOSED DOOR POLICY].

⁹²⁶ *Id.* at 26.

⁹²⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 145.

⁹²⁸ USCR PAKISTAN REPORT, *supra* note 924, at 9.

⁹²⁹ CLOSED DOOR POLICY, *supra* note 925, at 20.

⁹³⁰ *Id.* at 27.

⁹³¹ USCR PAKISTAN REPORT, *supra* note 924, at 24, 26, 28-29.

⁹³² *Id.* at 29.

⁹³³ *Id.* at 30.

⁹³⁴ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁹³⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1 at 114.

⁹³⁶ *Id.*

⁹³⁷ *Id.*

⁹³⁸ *Id.*

⁹³⁹ HRCA Conversation, *supra* note 78.

⁹⁴⁰ Nic Maclellan, *Border crossers or refugees?* ABC Asia Pacific, available at http://abcasiapacific.com/journeys/opinion_maclellan.htm (last accessed Aug. 29, 2002).

⁹⁴¹ Mallesons Stephen Jaques Correspondence, *supra* note 39.

⁹⁴² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1 at 115.

⁹⁴³ HREOC II Correspondence, *supra* note 67.

⁹⁴⁴ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 243.

⁹⁴⁵ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 186.

⁹⁴⁶ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

⁹⁴⁷ E-mail from Kasia Zdybska, Uniwersytet Jagiellonski, Human Rights Centre, to Emily O'Connor, Debevoise & Plimpton, (Sept. 9, 2002) (on file with Debevoise & Plimpton).

⁹⁴⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* at note 1, at 187.

⁹⁴⁹ DRC E. EUR. REPORT 1999, *supra* note 1, *Poland*.

⁹⁵⁰ E-mail from Dr. Halina Niec, Uniwersytet Jagiellonski, Human Rights Centre, to Emily O'Connor, Debevoise & Plimpton, (May 9, 2002) (citing Article 40 of the Amended Polish Act on Aliens and related ordinances)(on file with Debevoise & Plimpton) [hereinafter Uniwersytet Jagiellonski Correspondence (May 9, 2002)].

⁹⁵¹ ECRE EUR. STUDY 2001, *supra* note 1, at 237; Uniwersytet Jagiellonski Correspondence (May 9, 2002), *supra* note 950; Jack Chlebny & Wojciech Trojan, *The Refugee Status Determination Procedure in Poland*, 12 Int'l J. Refugee L. 212, 230 (2000) [hereinafter Chlebny & Trojan].

⁹⁵² ECRE EUR. STUDY 2001, *supra* note 1, at 237.

⁹⁵³ *Id.* at 230.

⁹⁵⁴ *Id.* at 237; DRC E. EUR. REPORT 1999, *supra* note 1, *Poland*.

⁹⁵⁵ Chlebny and Trojan, *supra* note 951, at 224.

⁹⁵⁶ *Id.* at 225-226; E-mail from Kasia Zdybska, Uniwersytet Jagiellonski, Human Rights Centre, to Emily O'Connor, Debevoise & Plimpton, (Sept. 11, 2002) (on file with Debevoise & Plimpton).

⁹⁵⁷ Act on Aliens, Art. 60 (1997) (Pol.), available at <http://www.ujhrc.org/en/legaldocuments/polish/01/01ch07.htm> (last accessed Aug. 29, 2002).

⁹⁵⁸ ECRE REPORT 2001, *supra* note 1, at 187.

⁹⁵⁹ Chlebny & Trojan, *supra* note 951, at 228.

⁹⁶⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Poland*.

⁹⁶¹ ECRE REPORT 2001, *supra* note 2, at 187.

⁹⁶² USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 245.

⁹⁶³ E-mail from Monica Farinha, Portuguese Refugee Council, to Emily O'Connor, Debevoise & Plimpton (Feb. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Portuguese Refugee Council Correspondence (Feb. 13, 2002)]; *also* USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 187.

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- ⁹⁶⁴ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ⁹⁶⁵ Portuguese Refugee Council Correspondence (Feb. 13, 2002), *supra* note 963.
- ⁹⁶⁶ E-mail from Monica Farinha, Portuguese Refugee Council Correspondence, to Emily O'Connor, Debevoise & Plimpton (Nov. 15, 2001) (on file with Debevoise & Plimpton) [hereinafter Portuguese Refugee Council Correspondence (Nov. 15, 2001)]; ECRE EUR. STUDY 2001, *supra* note 1, at 244; DRC W. EUR. REPORT 2000, *supra* note 1, at 241.
- ⁹⁶⁷ ECRE EUR. STUDY 2001, *supra* note 1, at 244.
- ⁹⁶⁸ DRC W. EUR. REPORT 2000, *supra* note 1, at 244; Portuguese Refugee Council Correspondence (Feb. 13, 2002), *supra* note 963.
- ⁹⁶⁹ ECRE EUR. STUDY 2001, *supra* note 1, at 244; ECRE REPORT 2001, *supra* note 1, at 195.
- ⁹⁷⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ⁹⁷¹ UNHCR EU REPORT 2000, *supra* note 1, at 136-137; DRC W. EUR. REPORT 2000, *supra* note 1, at 248.
- ⁹⁷² DRC W. EUR. REPORT 2000, *supra* note 1, at 245.
- ⁹⁷³ Portuguese Refugee Council Correspondence (Feb. 13, 2002), *supra* note 963.
- ⁹⁷⁴ Portuguese Refugee Council Correspondence (Nov. 15, 2001), *supra* note 966.
- ⁹⁷⁵ DRC W. EUR. REPORT 2000, *supra* note 1, at 245.
- ⁹⁷⁶ *Id.* at 243; UNHCR EU REPORT 2000, *supra* note 1, at 136; Portuguese Refugee Council Correspondence (Feb. 13, 2002), *supra* note 963.
- ⁹⁷⁷ DRC W. EUR. REPORT 2000, *supra* note 1, at 244; Portuguese Refugee Council Correspondence (Nov. 15, 2001), *supra* note 966.
- ⁹⁷⁸ UNHCR EU 2000 REPORT, *supra* note 1, at 137-138; Portuguese Refugee Council Correspondence (Nov. 15, 2001), *supra* note 966; ECRE REPORT 2001, *supra* note 1, at 198.
- ⁹⁷⁹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 245.
- ⁹⁸⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ⁹⁸¹ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.
- ⁹⁸² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ⁹⁸³ *Civil and Political Rights, Including questions of Torture and Detention, Addendum, Visit to Romania: Report of the Working Group on Arbitrary Detention*, U.N. Commission on Human Rights, 55th Sess., Agenda Item 11(a), at ¶5,30, U.N. Doc. E/CN.4/1999/63/Add.4 (1998) [hereinafter UNHCR Working Group on Arbitrary Detention Report]; USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ⁹⁸⁴ UNHCR Working Group on Arbitrary Detention Report, *supra* note 983, at ¶¶ 4, 18.
- ⁹⁸⁵ DRC E. EUR. REPORT 1999, *supra* note 1, *Romania*; USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189.
- ⁹⁸⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 188.
- ⁹⁸⁷ ECRE EUR. STUDY 2001, *supra* note 1, at 254.
- ⁹⁸⁸ *Id.* at 253-254.
- ⁹⁸⁹ UNHCR Working Group on Arbitrary Detention Report, *supra* note 983, at ¶ 36.
- ⁹⁹⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Romania*.

⁹⁹¹ *Id.*

⁹⁹² Presently comprised of Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

⁹⁹³ Estonia, Latvia and Lithuania.

⁹⁹⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 193.

⁹⁹⁵ *Id.* at 189.

⁹⁹⁶ By an order of President Putin in 2001, the Ministry of Federal Affairs, National and Migration Policy was dissolved and the MOI was put in charge of all matters related to refugees and asylum seekers.

⁹⁹⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189.

⁹⁹⁸ *Id.*

⁹⁹⁹ *Id.* at 194.

¹⁰⁰⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Russian Federation*.

¹⁰⁰¹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 194.

¹⁰⁰² *Id.*

¹⁰⁰³ *Id.*

¹⁰⁰⁴ Russian Federation Law No. 95 F-3 “On Refugees,” February 19, 1993, as amended (Law on Refugees), *available in Russian at* <http://black.inforis.nnov.su> (last accessed Sept. 16, 2002) [hereinafter Law on Refugees].

¹⁰⁰⁵ Olga Osipova, *Work With Undocumented People*, paper presented at the conference Refugee Status Determination: Standard of Proof and Status Determination of Undocumented Asylum Seekers, Prague (December 3-4, 1999), *available at* <http://refugees.memo.ru> (last accessed Sept. 16, 2002).

¹⁰⁰⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 194.

¹⁰⁰⁷ Law on Refugees, Art. 8, ¶ 1(4).

¹⁰⁰⁸ Danish Refugee Council, *Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries*, *available at* <http://www.flygtning.dk/publikationer/rapporter/legalandsocialeast/rus3/index.php> (last accessed Sept. 9, 2002).

¹⁰⁰⁹ Law on Refugees, *supra* note 1004.

¹⁰¹⁰ Osipova, *Legal Problems Concerning the Detainment and Deportation of Asylum Seekers*, *supra* note 1005.

¹⁰¹¹ Law on Refugees, *supra* note 1004.

¹⁰¹² *See id.* for a discussion on the difficulty of appealing the decision on detention.

¹⁰¹³ *Id.*

¹⁰¹⁴ Law on Refugees, *supra* note 1004.

¹⁰¹⁵ *Id.*

¹⁰¹⁶ *Id.* (discussing a Russian Constitutional Court Ruling from February 17, 1998, which held “...the term necessary to perform the exclusion from the country must not be regarded as a ground for the detention of a person for an undefined period of time even when the deportation of a stateless person can be delayed because no state agrees to receive the person being deported. Otherwise the detention as a measure necessary for

the execution of the decision on deportation would transform into an independent form of punishment not envisaged by the legislation of the Russian Federation and contradicting to the said standards of the Constitution of the Russian Federation.”).

¹⁰¹⁷ *Id.*

¹⁰¹⁸ Information about this organization is available at <http://refugees.memo.ru>.

¹⁰¹⁹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1 at 60.

¹⁰²⁰ Systeme des Nations Unies au Senegal HRC (Haut-Commissariat des Nations Unies pour les refugies), PROTECTION (SENEGAL), *available* at <http://un.org.sn/html/hcr/sta.htm> (last accessed Sept. 16, 2002) [hereinafter PROTECTION (SENEGAL)].

¹⁰²¹ UNHCR, UNCHR MID-YEAR PROGRESS REPORT (2001), *available* at <http://www.unhcr.ch/pubs/fdrs/my2001/my2001toc.htm> (last accessed Sept. 16, 2002).

¹⁰²² E-mail from Sadikh Niass, West African Refugees and Internally Displaced Persons Network (WARIPNET) and RENCONTRE AFRICAINE POUR LA DÉFENSE DES DROITS DE L'HOMME (RADDHO), to Anna Mecagni, Lawyers Committee for Human Rights (Aug. 1, 2002).

¹⁰²³ *Id.*

¹⁰²⁴ PROTECTION (SENEGAL), *supra* note 1020.

¹⁰²⁵ UNHCR, 2001 UNHCR POPULATION STATISTICS PROVISIONAL, Table 15, *available* at <http://www.unhcr.ch/cgi-bin/tehis/vtx/home?page=statistics> (last accessed Sept. 16, 2002).

¹⁰²⁶ E-mail from Sadikh Niass, West African Refugees and Internally Displaced Persons Network (WARIPNET) and RENCONTRE AFRICAINE POUR LA DÉFENSE DES DROITS DE L'HOMME (RADDHO), to Anna Mecagni, Lawyers Committee for Human Rights (Aug. 1, 2002) [hereinafter WARIPNET & RADDHO Correspondence].

¹⁰²⁷ *Id.*

¹⁰²⁸ PROTECTION (SENEGAL), *supra* note 1020.

¹⁰²⁹ WARIPNET & RADDHO Correspondence, *supra* note 1026.

¹⁰³⁰ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 254.

¹⁰³¹ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 197.

¹⁰³² *Asylum Trends In 28 Industrialized Countries*, *supra* note 6

¹⁰³³ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 255.

¹⁰³⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 198.

¹⁰³⁵ *Slovak Parliament Passes New Asylum Law*, BBC Monitoring International Report, June 20, 2002, available at LEXIS, NEXIS Library, News Group File, All.

¹⁰³⁶ E-mail from Martin Skamla, Slovak Helsinki Committee Correspondence, to Emily O'Connor (Aug. 14, 2002) (on file with Debevoise & Plimpton).

¹⁰³⁷ E-mail from Martin Skamla, Slovak Helsinki Committee, to Eileen Suh, Debevoise & Plimpton (Sept. 16, 2002) (on file with Debevoise & Plimpton) [hereinafter Slovak Helsinki Committee Correspondence (Sept. 16, 2002)].

¹⁰³⁸ DRC E. EUR. REPORT 1999, *supra* note 1, *Slovakia*.

¹⁰³⁹ E-mail from Martin Skamla, Slovak Helsinki Committee Correspondence, to Emily O'Connor (Nov. 19, 2001) (on file with Debevoise & Plimpton); E-mail from Martin Skamla, Slovak Helsinki Committee, to Mateo Taussig-Rubbo, Debevoise & Plimpton (Mar. 1, 2002) (on file with Debevoise & Plimpton) [hereinafter Slovak Helsinki Committee Correspondence (Mar. 1, 2002)] (The "closed" reception centers are not really closed – asylum seekers' movements are not restricted.).

¹⁰⁴⁰ DRC E. EUR. REPORT 1999, *supra* note 1, *Slovakia*.

¹⁰⁴¹ E-mail from Martin Skamla, Slovak Helsinki Committee, to Emily O'Connor, Debevoise & Plimpton (Feb. 5, 2002) (on file with Debevoise & Plimpton) [hereinafter Slovak Helsinki Committee Correspondence (Feb. 5, 2002)]; Slovak Helsinki Committee Correspondence (Mar. 1, 2002), *supra* note 1039.

¹⁰⁴² Slovak Helsinki Committee Correspondence (Mar. 1, 2002), *supra* note 1041.

¹⁰⁴³ Slovak Helsinki Committee Correspondence (Sept. 16, 2002), *supra* note 1037.

¹⁰⁴⁴ Slovak Helsinki Committee Correspondence (Feb. 5, 2002), *supra* note 1041.

¹⁰⁴⁵ Slovak Helsinki Committee Correspondence (Sept. 16, 2002), *supra* note 1037.

¹⁰⁴⁶ DRC E. EUR. REPORT 1999, *supra* note 1, *Slovakia*.

¹⁰⁴⁷ Slovak Helsinki Committee Correspondence (Feb. 5, 2002), *supra* note 1041.

¹⁰⁴⁸ *Id.*

¹⁰⁴⁹ DRC E. EUR. REPORT 1999, *supra* note 1, *Slovakia*.

¹⁰⁵⁰ *Id.*

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¹⁰⁵⁵ Frankie Jenkins and Lee Anne de la Hunt, *Detaining Asylum seekers: Perspectives on Reception Centres for Asylum seekers in South Africa*, report for the National Consortium on Refugee Affairs for the University of Cape Town Legal Aid Clinic, September 2000; Frankie Jenkins, 'Refugee camps in South Africa: panacea or protuberance?', Botshabelo August 2001, vol. 4, no. 1, Lawyers for Human Rights; Jacob van Garderen, 'Editorial' and 'Introducing reception centres', Botshabelo July-August 1999, vol. 2, no. 3.

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¹⁰⁵⁷ §§ 23, 22(5)-(6) of Act No. 130 of 1998 (Refugees Act of 1998); Government Notice (GN) R366/2000, at §§8-9.

¹⁰⁵⁸ SOUTH AFR. HUM. RTS. COMM'N, ILLEGAL? REPORT ON THE ARREST AND DETENTION OF PERSONS IN TERMS OF THE ALIENS CONTROL ACT 23-25 (Mar. 1999).

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<http://www.gov.za/reports/2000/lindela2.pdf> (last accessed Aug. 29, 2002) [hereinafter LINDELA].

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¹⁰⁶³ Jonathan Klaaren, *A Guide to South African Refugee Law*, at 36 (January 2000).

¹⁰⁶⁴ LINDELA, *supra* note 1059, at 50.

¹⁰⁶⁵ Refugees Act 1998, §29(1).

¹⁰⁶⁶ LINDELA, *supra* note 1059, at 54 (discussing *South Afr. Hum. Rts. Comm'n and Forty Others v. Minister of Home Affairs and Dyambu (Pty) Ltd.*, case no. 28367/99 (Witwatersrand High Court); BB only gives examples of Wits. High Court pre-1910, and Wits. Local Division, post].

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¹⁰⁶⁸ §55(1) of Act No. 96 of 2001 (Aliens Control Act).

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¹⁰⁷⁶ Lawyers for Human Rights Correspondence (Feb. 13, 2002), *supra* note 1061.

¹⁰⁷⁷ *Id.*

¹⁰⁷⁸ S. AFR. CONST. (1996), Ch. 3 (Fundamental Rights), §28(1).

¹⁰⁷⁹ Refugees Act of 1998, §29(2).

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¹⁰⁸¹ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 257.

¹⁰⁸² *Asylum Applications Lodged in 1992-2001*, *supra* note 91.

¹⁰⁸³ *Asylum Trends in 28 Industrialized Countries*, *supra* note 6.

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¹¹⁷⁶ *Id.*

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¹¹⁸⁵ *Id.* at 64.

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¹¹⁹² USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 191.

¹¹⁹³ *Id.* at 193.

¹¹⁹⁴ Irene Bruegel and Eva Natamba, *Social Science Research Paper No. 16:*

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¹²⁰⁰ *Detention on Arrival*, *supra* note 1197, at 10.

¹²⁰¹ *Maintaining Contact*, *supra* note 1194, at iv.

¹²⁰² *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland* ¶16, U.N. Doc. CCPR/CO/73/UK;CCPR/CO/73/UKOT (Dec. 6, 2001) *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.73.UK;CCPR.CO.73.UKOT.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.73.UK;CCPR.CO.73.UKOT.En?Opendocument) (last accessed August 29, 2002) [hereinafter UNHRC Conclusions].

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¹²³⁹ DRC W. EUR. REPORT 2000, *supra* note 1, at 311; Bail for Immigration Detainees Correspondence (Aug. 22, 2002), *supra* note 1235.

¹²⁴⁰ Bail for Immigration Detainees Correspondence (Aug. 22, 2002), *supra* note 1235.

¹²⁴¹ Correspondence to Joint Committee, *supra* note 1227, at 4; Human Rights Watch, *Briefing Paper, Commentary on the United Kingdom Home Office White Paper: Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (March 2002) at 1.b, available at <http://hrw.org/backgrounder/eca/uk-briefing.htm> (last accessed Aug. 29, 2002) [hereinafter HRW Briefing Paper].

¹²⁴² Refugee Council Correspondence (June 6, 2002), *supra* note 1212; Bail for Immigration Detainees, *Response to Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, at 3-4, available at <http://www.biduk.org/info.htm> (last accessed Aug. 13, 2002).

¹²⁴³ HRW Briefing Paper, *supra* note 1241, at 1.b.

¹²⁴⁴ Refugee Council Correspondence (June 6, 2002), *supra* note 1212; United Kingdom Response to LCHR Questionnaire, *supra* note 1197.

¹²⁴⁵ E-mail from Alison Harvey, Medical Foundation for the Care of Victims of Torture, to Jaya Ramji, Debevoise & Plimpton (Oct. 19, 2001, 12:23 EST) (on file with Debevoise

& Plimpton); Refugee Council, *Response to Secure Borders, Safe Haven, Government White Paper* (Feb. 2002), at 13.

¹²⁴⁶ United Kingdom Response to LCHR Questionnaire, *supra* note 1197; Bail for Immigration Detainees Correspondence, *supra* note 1215.

¹²⁴⁷ Correspondence to Joint Committee, *supra* note 1227, at 3.

¹²⁴⁸ Letter to E.U. Heads of State, *supra* note 422.

¹²⁴⁹ United Kingdom Response to LCHR Questionnaire, *supra* note 1197.

¹²⁵⁰ Saadi, *supra* note 1203, at 17.

¹²⁵¹ ECRE EUR. STUDY 2001, *supra* note 1, at 312.

¹²⁵² Refugee Council Correspondence (June 6, 2002), *supra* note 1212; Salinsky, Lumley, and Stancer, Report on Visit to Yarl's Wood (Jan. 15, 2002), at 1; USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 192.

¹²⁵³ UNHCR Conclusions, *supra* note 1202, at ¶16.

¹²⁵⁴ Refugee Council Correspondence (June 6, 2002), *supra* note 1212.

¹²⁵⁵ *Id.*

¹²⁵⁶ UNHCR EU 2000 REPORT, *supra* note 1, at 168.

¹²⁵⁷ ECRE EUR. STUDY 2001, *supra* note 1, at 312.

¹²⁵⁸ *Maintaining Contact*, *supra* note 1194, at v, 8, 11.

¹²⁵⁹ United Kingdom Response to LCHR Questionnaire, *supra* note 1197.

¹²⁶⁰ *Id.*

¹²⁶¹ Refugee Council Correspondence June 6, 2002, *supra* note 1212; UNHCR EU 2000 REPORT, *supra* note 1, at 171.

¹²⁶² Press Release, Bail for Immigration Detainees, New Government Policy on Use of Immigration Detention for Children is Without Basis and a Violation of Children's Rights (July 17, 2002) (on file with the author).

¹²⁶³ Medical Foundation Correspondence (Nov. 15, 2001), *supra* note 1205.

¹²⁶⁴ *generally* Alison Harvey, Medical Foundation for the Care of Victims of Torture, The Detention of Asylum seekers – Beyond the Deciding to Detain Report (Presentation for the University of Cambridge Institute of Criminology, Mar. 20, 2001) (unpublished manuscript on file with Debevoise & Plimpton).

¹²⁶⁵ Medical Foundation Correspondence (Nov. 15, 2001), *supra* note 1205.

¹²⁶⁶ This information was prepared by Eleanor Acer of the Lawyers Committee for Human Rights. For additional information visit LCHR's website at www.lchr.org. Copies of various LCHR reports, including *Refugees Behind Bars*, a comprehensive 1999 Report on the asylum detention system, are available there.

¹²⁶⁷ Eric Shmitt, *When Asylum Requests Are Overlooked*, N.Y. TIMES, Aug. 15, 2001, at A6; John Moreno Gonzalez, *Amityville Woman Seeks \$8million In JFK Mix-Up*, NEWSDAY, July 12, 2000.

¹²⁶⁸ *Id.*; The Expedited Removal Study, *Report on the First Three Years of Implementation of Expedited Removal* (2000); Lawyers Committee for Human Rights, *Is This America? The Denial of Due Process to Asylum Seekers in the United States* (2000).

¹²⁶⁹ INA § 235(b)(1)(B)(iii)(IV); INA § 212(d)(5)(A) (providing for parole “on a case-by-case basis for urgent humanitarian reasons or significant public benefit” for an alien applying for admission); 8 Code of Federal Regulations (C.F.R.) § 235.3(c); 8 C.F.R. § 212.5(a); Memorandum from Office of INS Deputy Commissioner, “Implementation of Expedited Removal,” March 31, 1997, reprinted in 74 *Interpreter Releases* (April 21, 1997) (“[o]nce an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria”) (citing to 1997 INS Guidelines).

¹²⁷⁰ 8 C.F.R. § 3.19.

¹²⁷¹ 8 C.F.R. § 3.19 (h)(2)(i)(B).

¹²⁷² Dan Mallone, *851 Detained for Years in INS Centers – Many are Pursuing Asylum*, DALLAS MORNING NEWS, April 1, 2001; U.S. National Council of Churches, *People Fleeing From Persecution Held In Worse Than Prison Conditions In the U.S.* (Press Release, April 20, 2001), available at www.nccusa.org/news/01news38.html (last accessed Sept. 16, 2002); Testimony of Bishop Thomas G. Wenski on behalf of National Conference of Catholic Bishops Committee on Migration, before The House Judiciary Subcommittee on Immigration and Claims, May 15, 2001 (on file with Lawyer’s Committee for Human Rights).

¹²⁷³ FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277), §§ 903-904; *Frederick N. Tulsky, Asylum Seekers Face Tougher U.S. Laws, Attitudes* (INS lacks precise data on detained asylum seekers; regarding failure to comply with statute requiring that INS report data: “An INS spokesman said that complying with the law would drain resources from other mandated responsibilities.”).

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¹²⁷⁵ USCR WORLD REFUGEE SURVEY 2001, *supra* note 1, at 12.

¹²⁷⁶ United Nations High Commissioner for Refugees, *Asylum Applications Lodged in Europe, North America, Australia and New Zealand January-September 2001*, Table 1, available at www.unhcr.ch/cgi-bin/tehis/vtx/home/opendoc.pdf?tbl=STATISTICS&id=3be27e964&page=statistics (last accessed Sept. 16, 2002).

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¹²⁷⁸ Amnesty International, AMNESTY INTERNATIONAL’S CONCERNS REGARDING POST SEPTEMBER 11 DETENTIONS IN THE USA (AI Index: AMR 51/044/2002, March 2002); Jim Edwards, *Attorneys Face Hidden Hurdles*, NEW JERSEY LAW JOURNAL (Dec. 3, 2001).

¹²⁷⁹ Jody A. Benjamin, *Iraqi Refugees Cleared by FBI Could Still Face Deportation*, SOUTH FLORIDA SUN-SENTINEL, Dec. 12, 2001.

¹²⁸⁰ 8 C.F.R. § 3.19.

¹²⁸¹ 8 C.F.R. § 3.19 (h)(2)(i)(B).

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¹²⁸³ Mallone, *851 Detained for Years in INS Centers*, *supra* note 1272.

¹²⁸⁴ Tulsy, *Asylum Seekers Face Tougher US Laws*, *supra* note 1273.

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