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- A study of the biometric registration  
of refugees

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# Summary

Since 2002, UNHCR has been updating its registration practices by e.g. implementing a unified data system, the Project Profile, and the use of biometrics. Large groups of refugees now have to leave their fingerprints as well as other personal data with the organisation, to be stored and subsequently used to e.g. verify their identity. This modernisation campaign has been encouraged and financially supported by the EU. According to both UNHCR and the EU, the main motive for enhancing the registration practices is to strengthen the protection of refugees. Is registration fortifying the human rights awarded to refugees? This paper addresses the question, by examining UNHCR registration practices; evaluating standards of data protection and management in light of the obligations enumerated by the right to privacy in Art 17 ICCPR. Essentially, does UNHCR share the personal information and fingerprints of refugees with e.g. financial partners like the EU?

The conclusion made is that registration of refugees raises privacy issues. The right to privacy include both the protection of personal data and the protection of the integrity of the body. Data protection includes aspects like transparency, fairness, minimality and data subjects' participation and control. Presently, UNHCR fails to meet some of the protection standards set out by Art 17 ICCPR. For example the organisation does not sufficiently regulate the issue of dissemination, and the personal data therefore runs a substantial risk of being misused in the future. Primarily, external data transfers take place between UNHCR and host State authorities as well as resettlement countries.

The EU is currently establishing an advanced surveillance machinery, to monitor migration. The European migration management regime implies large amounts of personal data e.g. biometrics being stored, exchanged and used to identify unwanted arrivals and transborder crimes etc. As a corollary, the EU interest in gaining access to the information held by UNHCR is high. For example, UNHCR often receives requests from State representatives to share the personal data of refugees. So far, the only information shared with EU Member States and institutions has been statistical material. Moreover, UNHCR and the EU have started to collaborate in projects concerned with the initial screening of arrivals i.e. asylum seekers and refugees, e.g. Lampedusa in Italy. The EU wants to develop the cooperation further.

Consequently, UNHCR needs to implement data protection regulations, safeguarding the information it holds on refugees. In the hands of EU Member States and institutions the personal data of refugees could be used to speed up asylum determination processes and to increase the use of readmission agreements and safe third country rules; restrictive policies seriously undermining the international protection of refugees.

# Abbreviations

ACHR	American Convention on Human Rights
CoE	Council of Europe
EC	European Commission
ECHO	European Commission Humanitarian Office
ECRE	European Council on Refugees and Exiles
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-governmental organisation
NIS	Western Newly Independent States
OECD	Organisation for Economic Co-operation and Development
Refugee Convention	1951 Convention relating to the Status of Refugees
RPP	Regional Protection Programme
SIS	Schengen Information System
UDHR	Universal Declaration of Human Rights
UNHCR	The United Nations High Commissioner for Refugees
VIS	Visa Information System

# 1 Introduction

One of the central dimensions of globalisation is the growing mobility of people across national borders. Estimates suggest that around 191 million people live outside their country of birth- a number that has almost doubled over the last 50 years.<sup>1</sup> The perceived fear of large numbers of migrants, among them asylum seekers and refugees, arriving in an increasingly globalised world has spawned a distinct desire for immigration control throughout the Western hemisphere. Since September 11, and subsequent terrorist attacks in Europe, Asia and the Middle East, national security and migration have been brought sharply into focus, emphasising the question of weak migration management systems endangering the security and safety of the destination country and its population.

In Europe, migration control is a salient part of the developing common EU asylum policy. Member State governments and EU institutions are concerned about the perceived rise of unauthorized migration and the interrelated issues of criminal activities such as trafficking and smuggling of human beings thus increasingly preoccupied with sealing of the outermost borders of the union. Ample resources are spent on high technology border control equipment e.g. electronic watchtowers with thermal cameras and underground detection cables, patrol boats; helicopters with radars and infrared scanners are used to scan the southern coastlines for boats traversing the Mediterranean Sea en route to Europe. Notwithstanding these efforts, migrants are still successful in reaching European soil, resulting in means of migration control being introduced by the EU, compassing new common policy areas and extended to affect territories further out in the periphery.

Additionally, the concept of free movement of persons in the EU accompanied by the abolition of intra Member State border controls has made it more difficult for state authorities to know who is present in their territory. As the ability of Member States to control the movement of citizens of the Union who are not their own nationals has diminished, the emphasis on controlling the movement of third country nationals has increased. A central feature of the developing EU migration management regime is the resources spent on establishing the identity of migrants arriving in the EU. Most problematic however, are those third country nationals whose identity is disputed and unknown. The individuals of greatest interest in these efforts are asylum seekers without documents. Eurodac, the EU-wide database storing fingerprints on asylum seekers from the first time lodging an asylum application, has enabled Member States to fix the identity of the asylum seeker after entering the Union. Nevertheless, the database has not solved the problematic question of how to get a hold of personal information about migrants *before* their arrival. Information about

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<sup>1</sup> UNFPA, 'State of world population 2006- A passage to Hope' (2006), p. 5, <[www.unfpa.org/upload/lib\\_pub\\_file/650\\_filename\\_sowp06-en.pdf](http://www.unfpa.org/upload/lib_pub_file/650_filename_sowp06-en.pdf)>, visited 7 June 2008.

the origin and travel routes of potential asylum seekers is useful for Member States in their efforts to cut the cost of receiving third country nationals by speeding up the processing of asylum claims and amplifying the use of return policies such as readmission agreements and ‘safe third country’ provisions – policies potentially endangering the international refugee regime e.g. the protection against refoulement.

In 2002, UNHCR started modernising its refugee registration activities by introducing the Project Profile; a unified database system that will ultimately allow for personal data of individuals, under the protection of UNHCR, to be interconnected globally and refugees to be identified through biometric features such as fingerprints and iris scans. The modernisation of the registration practices and the wish for a more accurate documentation of refugees has been deliberately encouraged and economically financed by the European Commission, as a means to e.g. securing the rights and protection of refugees. The question is if the concern for the rights of refugees is the sole motive for the EU interest, or is the collaboration between the EU and UNHCR in projects concerned with establishing the identity of refugees a means for the EU to access personal information on people potentially looking for protection in a European country. Several databases, containing diverse information on migrants, such as the Eurodac and the Visa Information System, are currently being established within the EU. The databases facilitate the exchange of information between e.g. different Member State authorities. Similarly, UNHCR is establishing its own databases and networks to enable data transfers. Mainly, transfers take place in three scenarios, governed by different guiding principles, i.e. transfers with host States, resettlement States and other parties such as international organisations and other States requesting information.

## 1.1 Purpose

This thesis will focus on the systematic biometric registration of refugees conducted by UNHCR in refugee camps around the world. Registration is traditionally seen as a prerequisite for refugee protection, and is argued by UNHCR to be a fundamental tool in strengthening the rights of refugees and implementing durable solutions.<sup>2</sup> The registration performed by UNHCR is mandatory - to get the support of UNHCR refugees have to put their personal information, including biometric features, at the disposal of the organisation. When registered, the refugees are provided with the protection and support of UNHCR in realising their rights, e.g. the right to be recognised as a person before the law as laid down in Art 16 of the International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup>. The

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<sup>2</sup> Durable Solutions means permanent solutions for refugees, The three Durable Solutions as defined by UNHCR, are *local integration* (in a country of asylum), *resettlement* (to a third country), or *voluntary repatriation* (to the refugee’s country of origin).

<sup>3</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23 1976.

registration is also making it practically possible for refugees to enjoy a legal personality. At the same time as the registration awards refugees with some rights it can likewise contribute to violations of other rights. The documentation and further processing of personal data including biometric features can e.g. infringe upon the right to privacy as stated in Art 17 ICCPR - the right to secrecy of automated personal data<sup>4</sup> and the right not to have the data invaded or exploited against the will of the data subject. Violations of privacy depend on how the information is collected, stored and processed by UNHCR. Additionally, the collection of fingerprints can interfere with the integrity of the body of the individual. Moreover and as was mentioned above, depending on who will be allowed access to the information, the registration could imperil basic refugee rights such as the protection against refoulement. The potential conflict between different human rights provisions, potentially arising from the registration conducted by UNHCR represents the basis to the overall question of this thesis: is the registration really fortifying the rights of the refugees or is it in fact in some aspects doing the opposite?

In order to find an answer to this question I will firstly examine and scrutinise the reasons for biometrics registration of refugees, with special attention being given to the above mentioned restrictive EU agenda regarding migration and refugee protection, including the role of the EU in refugee registration activities performed by UNHCR. What motives are put forward by UNHCR and the EU for the enhanced registration of refugees? Are there other surreptitious motives for the introduction of biometrics registration through Project Profile?

Secondly, describe the relation between refugee registration and international conventions for the protection of human rights, and take into consideration the obligations recognised in human rights law concerning the handling i.e. the storage, use and disclosure of personal data. Are UNHCR practices in the area in compliance with the standards enumerate by human rights law? With regard to the mandatory fingerprinting by UNHCR, I will examine under what circumstances an interference with the integrity of a persons body can be permissible according to the right to privacy.

## 1.2 Method and Materials

This thesis is partly based on materials collected during a minor field study in Tanzania. The purpose for the field study was to interview UNHCR personnel and refugees involved in the registration process and to observe the actual registration procedure. During my stay in Tanzania several unexpected problems arose; I was not allowed by the Tanzanian Ministry of Home Affairs to interview refugees in the campsites. The number of UNHCR staff present in the area was heavily reduced during this period

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<sup>4</sup> By 'personal data' is meant data (or information) that relate to, and allow identification of, individual physical/natural persons (and sometimes groups or organisations).



which meant that I was not able to interview as many people as I originally had planned for. Furthermore, because of technical difficulties registration activities were suspended throughout my stay. The interviews performed were semi-structured and conducted on a qualitative basis, thus welcoming discussion and a two-way communication. Written material was gathered through UNHCR in Tanzania and on UNHCR official website. In addition to the interviews made in Tanzania, I made some telephone interviews with officials at UNHCR Headquarters in Geneva and at the European Commission in Brussels.

I have used written materials regarding human rights law and more specifically materials concerning ICCPR. By searching different legal databases, I have found information about the EU immigration and asylum policy and information regarding the right to privacy and the use of biometrics.

## **1.2 Delimitations**

The issue of the responsibility under international human rights law for international organisations will not be dealt with exhaustively due to lack of space. The question will be addressed in chapter four, where some arguments to why UNHCR must adhere to the principles stipulated in the ICCPR regarding the right to privacy and data protection are presented.

When addressing the right to privacy and the obligations emanating from data protection, the analysis will not include the technical aspects of the collection and further processing of personal data.

The thesis will not adopt a child perspective and disregards the specific rights of children brought up by registration.

## **1.3 Outline**

The second chapter starts with a brief description of the emerging EU migration management scheme, its different parts and the restrictive and rationale behind it. The chapter then addresses the modernisation of UNHCR registration system, Project Profile and the collection of fingerprints, and the motives to why the European Commission has been its primary supporter. Also, argument will be put forward as to why the Project Profile can be seen as yet another means for the EU to control people potentially en route to the Union. The chapter will be concluded by an analysis of how the personal information on refugees held by UNHCR can affect the realisation of the restrictive refugee agenda in the EU and ultimately seriously weaken the international protection of refugees.

Chapter three contains a description of the empirical findings from the different interviews and observations made during the field study carried out at UNHCR Field Office in Kasulu in Tanzania and subsequent interviews in connection thereof. The opening of the chapter illustrates the long history of refugee receptiveness in Tanzania and the current political environment for refugee protection in Tanzania. Next, UNHCR activities in Tanzania will be described with emphasis put on the registration of refugees. Lastly, the practices of UNHCR regarding the collection, storing, use and sharing of personal information will be illustrated. Regarding dissemination of data

In chapter four, the requirements in connection with data protection emanating from Art 17 of the ICCPR will be treated. By comparing the practices of UNHCR with the obligations stipulated in human rights law regarding data protection I will consider UNHCR compliance with these standards. The analysis will be assigned to the general practise as described in UNHCR documents such as the Registration Handbook, the Confidentiality Guidelines and interviews with UNHCR personnel at the Headquarters in Geneva as well as with the observations and interviews I made during my field study in Tanzania.

The last chapter includes a discussion where the preceding chapters are summarised and the question if the biometric registration is strengthening the right of refugees will be reflected. The chapter will also give some guidance on how to improve the protection of the personal data held by UNHCR.

## 2 EU migration management

This chapter will describe the constituent policies of the EU migration management scheme. The chapter will illustrate how the bulk of the policies serve to restrict and prevent the entry of refugees and asylum seekers and also aim to speed up the return of those arriving on European territory. The different policies will be categorised into four groups; policies concerned with migratory surveillance, policies extending border control, return policies and policies intended to prevent migration to the Union. The chapter begins with describing one of the logics behind the scheme, risk management. Lastly, the Project Profile is fitted into the scheme and the cooperation between UNHCR and the EU in the area of refugee identification is depicted. The identification of migrants is a distinctive trait in the migration management regime. The Project Profile can be seen another means for the EU to extend its surveillance capacity to refugees outside Europe. As will be illustrated practices of the EU and UNHCR in the area of identification of refugees has started to intertwine.

### 2.1 Risk management

Thomas Gammeltoft-Hansen has described the developing common EU agenda on migration and asylum as increasingly embedded in a logic of risk management. Risks are unavoidable for late modern societies leaving policy makers preoccupied with managing the process instead of seeking particular ends. The European States are faced with increasing difficulties in controlling their borders and as a corollary risk management has shifted from focus on individuals to a focus on (...) classifying groups according to the danger they pose to society and manage them accordingly.<sup>5</sup> The management involves a process where migrants are traced and catalogued according to institutional categories such as ‘tourists’, ‘convention refugees’ and ‘illegal migrants’. Furthermore, upon entry migrants are thoroughly examined because of the specific risk potential they inherit in terms of transnational crime, overstay of visas and terrorism. A risk management strategy is simultaneously engaged in policies to prevent and hedge against migration risks.<sup>6</sup> In a ‘proactive or pre-emptive age, States no longer wait for migrants to show up at the border, instead they increasingly direct migration policy towards countries of origin or transit, to cut off the reasons or/and possibilities for people to migrate. Where preventive measures fail, a set of control mechanisms serve as ‘risk filters’, by hedging through the

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<sup>5</sup> T. Gammeltoft-Hansen, ‘Filtering Out the Risky Migrant, Migration Control, Risk theory and the EU’, *AMID Working Paper Series* (2006), p. 8, <[www.amid.dk/pub/papers/AMID\\_52-2006\\_Thomas\\_Gammeltoft-Hansen.pdf](http://www.amid.dk/pub/papers/AMID_52-2006_Thomas_Gammeltoft-Hansen.pdf)>, visited 7 June 2008.

<sup>6</sup> Id.

‘containment, confinement and dissuasion’ of those who are considered ‘risky migrants’.<sup>7</sup>

Gammeltoft-Hansen points out that within the EU, a transformation of the traditional notion of border control into a ‘migration flow management regime’ has taken place; where, (...) the object of control is no longer the borders themselves but flows of migrants, no longer a defence of sovereign territories but an ongoing process of identifying and preventing ‘risky elements’.<sup>8</sup> Through a combination of immigration surveillance and increasingly deterritorialised border control the ‘risky’ migrants are distinguished, monitored and handled accordingly.

## 2.2 Migration surveillance

The likely development towards a more or less integrated, totalised registration and surveillance system in Europe implies a development towards a vast “panoptical machine” which may be used for registration and surveillance of individuals as well as whole categories of people, and which may well become one of the most repressive political instruments of modernity.<sup>9</sup>

A large network of surveillance and identity systems are currently being constructed in the EU consisting of several different parts coordinated to closely supervise the movement of people and goods flowing in to and inside the Union to increase the control within EU territory. An essential part is the growing number of electronic databases where surveillance data from the Member States is reported, stored and shared. The three major databases being established or currently under construction is the Eurodac, Schengen Information System (SIS) and the EU Visa Information System (VIS). Additionally, the EU agreed in 2004 to introduce checks on all movements in and out of the Union by air with its own ‘passenger name record’ (PNR) system, where European airlines provide the information from their reservation system. This followed the highly controversial EU-US agreement to allow the USA access to all PNR details for those flying over there.<sup>10</sup> In 2005, the EU decided to introduce ‘biometric passports’ for all EU citizens in 2007 to respond to international demands for biometric travel documents.<sup>11</sup> The SIS II (the new version of SIS) and the VIS will consist of the ‘same technical platforms’. The Council maintains that the two systems will be separately deployed. Still, a centralised architecture and

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<sup>7</sup> Id.

<sup>8</sup> *Ibid.* p. 9.

<sup>9</sup> Statewatch Analysis, ‘SIS II: fait accompli? Construction of EU’s Big Brother database underway’ (2005), <[www.statewatch.org/news/2005/may/sisII-analysis-may05.pdf](http://www.statewatch.org/news/2005/may/sisII-analysis-may05.pdf)>, visited 7 June 2008.

<sup>10</sup> T. Bunyan, European Civil Liberties Network, ‘While Europe sleeps’ (2005), p. 3-4. <[www.ecln.org/essays/essay-11.pdf](http://www.ecln.org/essays/essay-11.pdf)>, visited 7 June 2008

<sup>11</sup> European Council, Note on the Draft Council Regulation on standards for security features and biometrics in passports and travel documents issued by Member States. 13490/04 LIMITE VISA 188 COMIX 613. Brussels. 19 October 2004.

a common technical platform will enable a future integration of the two which also seems to be the underlying motive of the Commission.<sup>12</sup>

## 2.2.1 Schengen Information System

One of the first steps in the creation of a Single market was the Schengen Agreement, originally signed in 1985 by five EU States (France, Germany, Belgium, Luxembourg and the Netherlands), enabling the elimination of border controls between the countries and establishing a common visa policy.<sup>13</sup> The 1985 Schengen Agreement was fully implemented by the 1990 Convention.<sup>14</sup> The initial agreement was said to be about the freedom of movement over the internal borders between the Schengen countries, however in order to ‘compensate’ for increased freedom of movement within the Schengen area, much of the agreement was about increased control of travellers coming in.<sup>15</sup> Common rules regarding visas, asylum rights and checks at external borders were adopted and coordination of the police, customs and the judiciary was increased. In fact, while just four articles in the 1990 Convention regards open borders, 138 are about increased control.<sup>16</sup> The principal purposes of border checks on persons include keeping the unwanted out and the wanted in. To effectively execute their control duties, border officials are in need of detailed information about traversing persons. If border checks between two countries are reduced or eliminated, as a compensatory measure the information at the external frontiers of both countries needs to be shared. The 1985 Schengen Agreement said nothing about the sharing of information, but the 1990 Convention created a multinational database for the use of immigration, border control, judicial and police authorities in any Member state which fully apply the Schengen Convention: the Schengen Information System (SIS). This vast database system, housed in Strasbourg, comprises e.g. of records of identities as well as information about lost or stolen objects, entered by Schengen Member States and then accessed by the other state agencies. A large number of the people listed in the SIS files so far have been asylum seekers.<sup>17</sup>

The Schengen Convention was incorporated into the Treaty of Amsterdam as part of EU law, and now extends fully to the fifteen States that were members of the EU before the 2004 and 2007 accessions, except for the United Kingdom and Ireland.<sup>18</sup> The incorporation of Schengen into the EU

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<sup>12</sup> Statewatch Analysis, *supra* note 9.

<sup>13</sup> European Council, *The Schengen Acquis*, Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, p. 13-18.

<sup>14</sup> European Council, *The Schengen Acquis*, Convention Implementing the Schengen Agreement of 14 June 1985, p. 19-62.

<sup>15</sup> C. Boswell, ‘The ‘external dimension’ of EU immigration and asylum policy’, *International Affairs* (2003), p. 622.

<sup>16</sup> *Id.*

<sup>17</sup> Statewatch Analysis, *supra* note 9.

<sup>18</sup> European Commission (2001) Development of the Schengen Information System II.

framework and the enlargement of the Union have meant that the SIS is no longer adequate to its purpose since it is designed to provide for the participation of only 18 States. As a result, steps were taken in 2001 to introduce a technically more advanced version, the SIS II. The creation of a new system has entailed the expansion of user capacity, but also a focus on possible extensions of the type of information held e.g. biometric features and rules regarding access. A number of proposals have been put forward to open up the use of SIS II to agencies such as Europol, to facilitate in combating organised crime and terrorism.<sup>19</sup> According to Gammeltoft-Hansen the SIS is transformed to a proactive instead of a reactive instrument, to be used not merely for reporting but as an investigation system, (...) the idea being to identify possible threats from people who aren't known, and have no record, absolutely requires broad data capture, use and retention.<sup>20</sup>

## 2.2.2 EU Visa System

In 1993, the first visa list was established in EU, 73 out of 183 non-EU countries were imposed with visa requirements. In 2001, the EU institutionalised two lists, one white and one black, to separate the nationals requiring a visa to enter the Union and the ones exempted from such an obligation. Today, the black list covers most of the counties in Africa, Central and South America.<sup>21</sup>

The Seville European Council on 21 and 22 June 2002 considered the establishment of a common identification system for visa data a top priority and called for its introduction as soon as possible.<sup>22</sup> In June 2004 the European Council took a decision to establish The Visa Information System (VIS).<sup>23</sup> The VIS is a system for the exchange of visa-data between Member States, and represents one of the key initiatives within the EU policies aimed at supporting stability and security within the area of freedom, justice and security. Presently, it is possible for an visa-applicant who has been rejected by one country's consulate to continue applying to other consulates. Once VIS is in place, this will no longer be possible given that information on previous applications and reasons for rejection will be available through the new system. The information will be collected by consulates in the different

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COM(2001) 720 final. Brussels. 18 December 2001.

<sup>19</sup> T. Gammeltoft-Hansen, *supra* note 5, p. 12.

<sup>20</sup> *Ibid.* p. 13.

<sup>21</sup> Council Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, art 1.1, Annex 1.

<sup>22</sup> European Council, *Presidency Conclusions*, Seville, 22.06.2002.

<sup>23</sup> Council Decision [2004/512/EC](#) of 8 June 2004 establishing the Visa Information System (VIS).

Member States and then transferred to a central database, VIS, where it will be accessible to all Member States.

Citizens from 134 countries require visas to enter the EU. The inclusion of fingerprint and photograph information is intended to allow border checks to verify whether the person presenting the visa is in fact the person to whom it was issued.<sup>24</sup> As such, the European visa system is a prime example of how migration control is moved outside of the physical borders of the Union.

### **2.2.3 Eurodac Information System**

Moreover, the Treaty of Amsterdam also authorised the establishment of the Dublin II Regulation<sup>25</sup>, laying down the criteria and mechanisms for determining the Member state responsible for examining an asylum application, submitted by a third country national in a Member state. The Dublin II Convention stipulates that asylum seekers are allowed to file for asylum in only one Member state, whose decision then has legal force in the Union as a whole, thus preventing a rejected applicant from taking her case to another Member state. The Eurodac Information System<sup>26</sup>, which became fully operational across the EU in 2003, makes up another component of the EU migration management regime Eurodac was established in order to ensure the effective implementation of the Dublin Convention by preventing multiple asylum claims within the EU. The main official function of the Eurodac is to collect and store fingerprints of all people over the age of 14 who have applied for asylum or been detained when illegally entering and residing in a Member state. Traditionally, the collection of fingerprints in most European countries has been limited to criminal investigations, making the Eurodac to somewhat of a novelty. Automated biometric identification systems like the Eurodac allow for the instant and exact comparison of unique physiological features such as an individual's iris, face, or fingerprints for law enforcement purposes.

## **2.3 Extension of border control**

A substantial part of EU externalisation strategy, is the export of traditional measures of border control to countries neighbouring the Union and countries exposed to large transit migration, to strengthen their capacity in

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<sup>24</sup> Statewatch Analysis, *supra* note 9.

<sup>25</sup> Council Regulation EC/343/2003 of 18 feb. 2003 establishing the criteria and the mechanisms for determining the Member state responsible for examining an asylum application lodged in one of the Member States by a third country national. (Dublin II Regulation).

<sup>26</sup> Council Regulation EC/2725/2000 of 11 Dec. 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

fighting illegal migration, smuggling and trafficking. Future EU Member States are obliged to incorporate the Schengen Agreement into their own national legislation, implying stricter border controls, immigration and asylum policies. Cooperation efforts in this area also involves the implementation of asylum laws and practices in adjacent countries, including capacity building of migration management and asylum systems with the aim to build up the refugee protection capacities of transit countries.<sup>27</sup>

An example of the EU enlargement of border control is the management of Ukraine's eastern border. The EU interest in Ukraine is connected to its geo-strategic value i.e. its size and location as well as its position as a major transit country providing a conduit for the cross border flow of a wide range of non-legal activities. Ukraine matters to the EU because of its central role in the regional order and at the same time is a concern in terms of soft security threats such as illegal immigration.<sup>28</sup> EU has in recent years initiated and supported a number of projects aimed at transforming the Ukraine's eastern border into a blockage against illegal immigration. Among the initiatives now in the making are: proper demarcation and build-up of physical infrastructure along the Ukrainian-Russian border and the formation of new border guard units. In addition to the build-up by traditional means of border control, EU has introduced a set of practices grouped around the concept of 'remote policing' or 'policing at a distance'.<sup>29</sup> The concept implies (...) remote control policies whereby agents of social control attempt to maintain the security of Western populations by establishing checkpoints and control stations in defined zones of disorder far away from their homelands.<sup>30</sup> The policing is performed by the EU Member States themselves through liaisons officers and the use of information technology to monitor and record transboundary movements. Remote policing can be deployed not only at border checks but also within the entire territory of target countries.<sup>31</sup> Liaison officers designates (...) a representative of one of the Member States, posted abroad by a law enforcement agency to...third countries ...to establish and maintain contacts with the authorities in those countries...with a view to contributing to preventing or investigating criminal offences.<sup>32</sup> According to the Commission, in combating illegal immigration the assignments of liaison officers is not connected to the sovereignty of States but instead are viewed to support and assist the competent border guard authorities.<sup>33</sup>

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<sup>27</sup> C. Boswell, *supra* note 15, p. 622.

<sup>28</sup> I. Gatev, 'Very Remote Control: Policing the Outer Perimeter of the EU Neighbourhood, Aston University, on file with the Author, p. 5.

<sup>29</sup> *Ibid.* p. 9.

<sup>30</sup> D. Bigo, 'Liaison Officers in Europe: New Officers in the European Security Field, in James Sheptycki (ed.), *Issues in Transnational Policing*, (Routledge, London 2000), p. 95.

<sup>31</sup> I. Gatev, *supra* note 28, p. 9.

<sup>32</sup> Council Decision on the Common Use of Liaison Officers Posted Abroad by the Law Enforcement Agencies of the Member States, p. 28.

<sup>33</sup> Commission Proposals for a Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Being in the European Union, p 31.



Collection of information constitutes a key part of the activity of liaison officers. To be able to gather information on various forms of trans-boundary movements taking place there is a need for the development of computerised collection systems. By the establishment of automated information systems in Ukraine an early warning system has been created, indicating the first signs of illegal immigration appearing, and allowing for law enforcement agencies (...) to deliver and obtain information as easily as possible, seven days a week, 24 hours a day.<sup>34</sup> The EU is altering the eastern border into networks of data sharing and surveillance by implementing unified automated systems e.g. control of foreigners' entry and departure, improved computerisation of the customs' administration and the creation of information systems and observatories of organised crime, including cross-border crime. The information is then transferred to competent Ukrainian authorities and further on to European law enforcement agencies such as Europol. Another initiative was executed in 2001, when Kiev introduced compulsory registration of all people crossing the eastern border and the data collected was progressively computerised.<sup>35</sup>

All the measures introduced or on the way to be introduced in Ukraine create a basis for information exchange and cooperation between Ukraine's law enforcement agencies and Europol. Europol serves as a central entity for information and analysis of criminal intelligence, used as a basis for strategies and policies in the area of curbing illegal immigration. While Europol has no collection facilities of its own, it relies on liaison officers and police attachés posed by the Member States to countries of origin and transit like Ukraine.<sup>36</sup>

## 2.4 Return policies

Since the idea of a perfectly sealed border has proven to be an unattainable goal, policy makers within the EU realised the need for ways to remove people from European territory following 'unauthorised' arrival.

### 2.4.1 Readmission

In addition, a salient element of the externalisation agenda is the widespread introduction of readmission agreements. Traditionally, countries neighbouring the Union have been reluctant to accept return to their territories of third country nationals as well as sometimes their own nationals. Today, due to considerable pressure from the EU in addition to substantial economic incentives, several countries are revising their positions and are now starting to admit to the return and readmission of third

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<sup>34</sup> *Ibid.* p. 28.

<sup>35</sup> I. Gatev, *supra* note 28, p. 12.

<sup>36</sup> Council Decision, *supra* note 32, p. 28.

state's nationals, including migrants who can be shown to have transited through the state *en route* to Europe.<sup>37</sup>

## 2.4.2 Safe third country

The "safe third country" notion was introduced in the law and practice of most Western European States in the past decade or so. It has now been formally embraced in EU legislation by Arts 23-25 of the Procedure Directive.<sup>38</sup> The Directive allows for 'accelerated' procedures in a wide range of cases: given the extremely broad definition of 'manifestly unfounded claims', many asylum applications run the risk of being examined under a speedious procedure. The list includes applicants from a 'safe country of origin' or a 'safe third country'. The so-called 'safe third countries' are countries to which asylum seekers may be returned, without their application being determined, and in which their application is supposed to be examined. The concept includes the return to a third country by which the asylum seeker has travelled *en route* to Europe and which has ratified the Refugee Convention and the ECHR, and has an asylum procedure. If a country is deemed a 'safe country of origin', the Directive enables Member States to declare applications from certain nationalities and regions as 'manifestly unfounded'.

The widespread introduction of accelerated asylum procedures have been highly criticised by several NGO's and refugee organisation as representing a serious threat to the international protection of refugees. UNHCR has pointed out that the question whether a particular country is 'safe' for the purpose of returning an asylum seeker is not a generic question – it is not possible to designate countries generally as 'safe', without considering the individual case because human rights situations can change rapidly.<sup>39</sup> The practice denies refugees their basic right to be heard – asylum seekers may not have access to either an individual examination of their claim or an effective opportunity to rebut the presumption that a given country is safe in their particular case. Since there is no obligation for the safe third country to process the application the practice carries the risk of refoulement or could lead to the possibility that asylum seekers will be passed on indefinitely.<sup>40</sup> The 'safe third country' notion means that Member States are able to shift their responsibilities under the Refugee Convention and other international instruments to third countries, regardless of whether the applicant will be protected against refoulement and treated on a case by case basis, hence

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<sup>37</sup> M. Garlick, 'The EU Discussions on Extraterritorial Processing: Solution or Conundrum?', *International Journal of Refugee Law* (2006), p. 614.

<sup>38</sup> Council Directive 2005/85/EC of 1 Dec 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. (The Asylum Procedures Directive).

<sup>39</sup> UNHCR, Background paper no. 2: The application of the "safe third country" notion and its impact on the management of flows and on the protection of refugees, May 2001.

<sup>40</sup> *Id.*

breaching the most fundamental obligations of the refugee protection regime.

## 2.5 Preventive policies

Different from the policies of the neighbouring States, EU focus on States further out in the periphery has directed itself mainly towards the building of protection capacities in regions of origin. This element encompasses a comprehensive focus on 'root causes' to migration, addressing issues of forced migration, poverty, unemployment and human rights abuses, through the use of foreign aid, trade and investment policies.<sup>41</sup>

### 2.5.1 Regional Protection Programmes

In 2003, the Commission issued a Communication 'On the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of regions of origin': "Improving access to durable solutions".<sup>42</sup> Proposals were made for the funding of activities to 'strengthen the protection capacity' of countries in region of origin and transit. The Commission strongly emphasised the disadvantageous impact a control-oriented agenda could have on the protection of refugees.<sup>43</sup> Through Regional Protection Programmes, partnerships with third countries would be established and hence refugee protection capacities enhanced.

The Commission by September 2005 presented a first outline of the substance of Regional Protection Programmes.<sup>44</sup> According to the communication the main objective of the regional protection programmes was the enhancement of the refugee protection capacity of third countries. The programmes, flexible and tailor-made to fit the specific situation, would serve as tools to solve protracted refugee situations and improve the general protection capacity of the country. Activities included in the programmes would be;

- improving the reception conditions of refugees,
- establishing an effective Refugee Status Determination procedure,

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<sup>41</sup> C. Boswell, *supra* note 15, p. 624.

<sup>42</sup> European Commission, Communication 'On the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin': "Improving access to durable solutions" COM (2004) 410 final, 4 June 2004.

<sup>43</sup> E. Haddad, 'The Refugee and the International Community: Externalising refugee policy to maintain status quo', *BISA 2006 Conference Papers* (2006), p.16, <[www.bisa.ac.uk/2006/online.htm](http://www.bisa.ac.uk/2006/online.htm)>, visited 30 May 2008.

<sup>44</sup> European Commission, Communication on Regional Protection Programmes, COM (2005) 388 final. 1 Sept. 2005.

- supporting and benefiting the local community hosting refugees by addressing environmental issues and emphasizing the positive effects of hosting refugees,
- provide training for those involved with refugees and migrants in protection issues,
- improving and enhancing the registration of people of concern to UNHCR to be used e.g. for the evaluation the impact of the RPPs,
- a voluntary resettlement commitment from the European States in the aim of providing durable solutions.<sup>45</sup>

The first two pilot RPPs were conducted and implemented by UNHCR during 2006; one in the Western Newly Independent States, Ukraine, Moldova and Belarus, perceived as a major region of transit for asylum seekers *en route* to EU from the East. The second project was set in Tanzania, a large refugee hosting area with a protracted character and with a low refugee protection standard. For the western NIS the RPP projects have been attached to the training of border guards in detecting asylum seekers and refugees heading for Europe, and to the improvement to access to asylum procedures; policies that fit well into the existing framework of extension of migration control mentioned above. In Tanzania, on the other hand, EU support has been limited to the support of already existing UNHCR activities designed to enhance the capacity of the national authorities to protect refugees, improve security in refugee camps, promote voluntary return of Burundian refugees, enhance access to resettlement and also improve registration of refugees.<sup>46</sup>

Many NGO's and refugee scholars look upon the RPP's as a constituting compensatory measure for the restrictive and exclusive control agenda deployed by the EU. By referring to implemented policies aimed at strengthening the economic and overall protection situation for refugees in regions of origin, restrictive migration policies serving to prevent the entrance of asylum seekers and contain refugees in their home regions, become justified. Moreover, sceptic voices were raised towards the choice of the NIS as a pilot area, and towards the bulk of policies implemented regarding to border control and enhancement of national asylum systems. The inadequate funding and the unspecific formulation of the proposals show a relatively low level of ambition and detail.<sup>47</sup> To impinge on the precarious conditions faced by most of the world's refugees, and to accomplish the overall goal of strengthening the refugee protection capacities of third countries, future RPP's would have to be significantly larger in their financial ambit.

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<sup>45</sup> *Ibid.* para 6.

<sup>46</sup> *Id.*

<sup>47</sup> M. Garlick, *supra* note 37, pp. 624-625.

## 2.5.2 Resettlement

At the same time as Europe raises its barriers against migrants and asylum seekers in general, and the preferred EU way to provide protection for refugees seems to be in their home regions, the EU is considering ways to offer a safe passage to Europe for a number of selected refugees by promoting the use of resettlement.<sup>48</sup> In 2003, the Commission initiated a feasibility study for the setting up of more resettlement schemes in EU Member States and a scheme at EU level. Since then the Commission has examined the prospects of an EU legislative framework on resettlement through the establishment of an EU-wide resettlement scheme within the framework of the Regional Protection Programmes mentioned above. The EU resettlement programme was proposed by the Commission in its Communication 'Towards more accessible, equitable and managed asylum systems', to feature as one option available to EU States within a 'toolbox' of measures, alongside other schemes such as supporting the ability of countries of first asylum to provide protection.<sup>49</sup> So far, small progress has been made on the establishment of a common EU resettlement programme. One of the main obstacles for the set up is the reluctance expressed by several Member States to agree to the number of resettlement cases to be fixed at EU level and not by the receiving country.<sup>50</sup> In 2006 the total amount of persons resettled by the assistance of UNHCR were some 29 560 admitted by thirteen countries, the four main receivers being the United States, Australia, Canada and Sweden. The number shows that only a small fraction of the world's refugees gets resettled.

Resettlement is a targeted mechanism, which allows refugees who remain at risk and in limbo in camps to be selected (by UNHCR) and transferred to a third country. It represents a burden-sharing mechanism whereby Western States show their willingness to share the responsibility of refugee situations with host countries that are often poor and overburdened.

The resettlement option has been viewed by some human rights organisations to represent a tool of migration control rather than a tool of international protection i.e. a means for Western refugee receiving States to achieve 'orderly entry' of the 'disorganised' asylum flows. UNHCR has pointed out that such 'orderly arrival schemes' (resettlement) can only be complementary to the option for asylum seekers to arrive spontaneously to e.g. Europe in search for asylum, and that (...) resettlement and asylum are two distinct and separate possibilities.<sup>51</sup>

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<sup>48</sup> Resettlement is the transfer of refugees from their country of asylum to a third country that has previously to admit them and them some formal status, normally as refugees with the possibility of acquiring future citizenship.

<sup>49</sup> ECRE, 'The Way Forward: Europe's role in the global refugee protection regime, Towards a European Resettlement Programme' (April 2005), p. 10, <[www.ecre.org/files/resettlement.pdf](http://www.ecre.org/files/resettlement.pdf)>, visited 12 June 2008.

<sup>50</sup> Interview with Georgia Georgiadou, DG-JHA Sector for Asylum European Commission, 16.04.2007.

<sup>51</sup> UNHCR, 'New Directions for Resettlement Policy and Practice', Standing Committee 21<sup>st</sup> Meeting (doc. EC/51/SC/INF.2), 14 June 2001, para. 24.

## 2.6 Project Profile – remote policing?

Since the implementation of Project Profile in 2002, the main financier of the scheme has been the EU. Over the last five years the Commission has contributed with €8.4 million towards the Project Profile, representing approximately half of the overall budget. The support has been channelled through the ECHO and has involved both financial and physical assistance to the registration activities by UNHCR in refugee camps all over the world.<sup>52</sup> The official motive put forward by the Commission, regarding the EU interest in refugee registration, is to strengthen the protection of refugees. According to the Commission, the systematic registration and documentation of asylum applicants are ‘important aspects of refugee protection’.<sup>53</sup> Simon Horner, Head of the Information Unit at ECHO, States that an efficient and comprehensive system for the registration of refugees is essential for the needs to be properly assessed and for aid to be delivered speedily and effectively. Registration of refugees is therefore an integral part of the international effort to help refugees.<sup>54</sup> This motive for supporting registration activities is also mentioned in the Communication “Improving access to durable solutions”. In the words of the Commission:

(...)UNHCR registration scheme “Profile”, which will ultimately utilise biometric technology [fingerprints], constitutes a fundamental protection tool to better manage who requires protection in a third country. Such a scheme could also prove invaluable in terms of evaluating the effects of the action taken under the EU Regional Protection Programmes.<sup>55</sup>

Georgia Georgiadou, at the EC Directorate-General for Freedom, Security and Justice considers that the accurate screening and documentation of refugees are important tools for EU Member States in the undertaking of larger caseloads of refugees for resettlement. UNHCR does the first selection of suitable candidates. The receiving States need to be confident that the refugees selected by UNHCR are what they claim to be, and that they qualify for the specific profile of the receiving state. A more accurate registration, through the use of biometrics, will reduce identity fraud and incorrect application of refugee bio-data, leading to larger resettlement quotas.<sup>56</sup>

Presently, the Commission is trying to establish a common EU resettlement system. Each Member state will receive a fixed number of resettlement cases on an annual basis. Today, the size of the resettlement caseloads is negotiated continuously on an *ad hoc* basis. According to Georgiou it is an almost impossible task getting the Member States to accept a permanent resettlement obligation under a common EU scheme which is why the refugee registration procedure is so important.

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<sup>52</sup> Interview with Simon Horner, Head of Information Unit at ECHO, 30.01.2007.

<sup>53</sup> European Commission, *supra* note 42, para 44 (c).

<sup>54</sup> Interview Simon Horner, *supra* note 52.

<sup>55</sup> European Commission, *supra* note 42, para. 51.

<sup>56</sup> Interview with Georgia Georgiadou, *supra* note 50.

When taking into consideration the common European asylum policy, the measures of extending migration control and the EU interest in refugee registration, some similarities between the concept of remote policing and the Project Profile become discernable. By the involvement in the registration activities of UNHCR the EU could get access to detailed information on refugees and also influence the management of the registration. Similar to the case of Ukraine, the EU has initiated and financed the introduction of a unified automated information system (ProGres) to facilitate the gathering, storing and exchange of information. Since the EU has no means of its own to collect personal information of refugees, the ECHO and/or even UNHCR can be used as intermediaries between the refugees, the authorities of host governments and the EU. If EU Member States get access to the personal files of refugees, it could facilitate the return of refugees entitled to protection through information on e.g. travel routes and previous protection gained.

The EU interest to collect personal information on certain categories of people as well as its ambition to use UNHCR in the process can be discernible in other projects. A strategy seems to be to incorporate UNHCR in projects concerned with the screening of migrants at the common EU-border. Currently, the EU is reinforcing the management of its southern maritime borders, by e.g. improving the screening of arrivals. In places exposed to large influxes of 'illegal' migrants such as Lampedusa in Italy, UNHCR has been assisting the EU and the Italian immigration authorities. The organisation has been assigned to single out and identify individuals with credible asylum claims. According to Georgiadou, the cooperation has been very successful and the EU wants to extend the collaboration further. In its Communication 'Reinforcing the Management of the European Union's Southern Maritime Borders' the Commission proposes the establishment of a pool of expert to temporarily assist countries with the first screening of migratory flows.<sup>57</sup> Communication refers to the participation of UNHCR and proposes that (...) a more structured contribution by UNHCR to the activities and operations under the coordination of FRONTEX should be explored (...) UNHCR experts should be invited to become a part of such expert teams.<sup>58</sup>

Further, the EU is also influencing the work of UNHCR by giving earmarked assistance to specific projects. In the nearest future, a large part of EU's financial support to UNHCR will be directed towards enhancing the biometric registration of refugees in the Maghreb region<sup>59</sup>, a major transit area for migration of people from sub-Saharan Africa to the southern borders of Europe.<sup>60</sup> Additionally, the next set of RPP's has been proposed

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<sup>57</sup> European Commission, Communication 'Reinforcing the Management of the European Union's Southern Maritime Borders', COM(2006) 733 final, para 27.

<sup>58</sup> *Ibid.* para 29-30.

<sup>59</sup> The Maghreb region in north-west Africa includes five countries which border the Atlantic Ocean and/or the Mediterranean Sea: Mauritania, Morocco, Libya, Algeria and Tunisia.

<sup>60</sup> Interview Georgia Georgiadou, *supra* note 50.

by the Commission to be located to the area surrounding Iraq. A main objective for the RPP will be to improve the registration of Iraqi refugees by introducing biometrics.<sup>61</sup>

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<sup>61</sup> Id.



## 3 UNHCR registration practices

### 3.1 Tanzania – a reluctant host

Tanzania has been a major refugee receiving country since the 1960s and has established a reputation as one of the most hospitable asylum countries in Africa. For decades, Tanzania welcomed refugees, offered them land for settlement, integrated them among the local populations and on occasion even made offers of citizenship to some of the long-term refugees – an example of this benevolent attitude toward refugees was the decision to naturalise some 36,000 Rwandan refugees in 1980. Tanzania has been hosting thousands of refugees fleeing both national liberation wars in Southern Africa and repression and post-colonial conflicts in neighbouring States, including Rwanda and Burundi.<sup>62</sup>

The nature of asylum in Tanzania changed dramatically during 1990s because of the hundreds of thousands of refugees seeking protection in the country due to the violent outburst of conflict and genocide in the Great Lakes Region. This mass-influx of refugees caused Tanzania's refugee population to increase from 292,100 at the end of 1992 to 883,300 at the end of 1994.<sup>63</sup> The largest number among this group are some 274,000 ethnic Hutu Burundian refugees living in refugee camps in Tanzania. They have fled the longstanding conflict in Burundi that has resulted in indiscriminate killing, rape, and torture of thousands of civilians by both the Tutsi-dominated government forces and Hutu armed opposition groups. Waves of violence have brought large influxes over Burundi border to Tanzania particularly in 1972, 1993 and 1996, and a constant flow of incoming refugees continues to date.<sup>64</sup> Recent arrivals since 1993 have been placed in refugee camps along the Burundian border in the Western part of Tanzania. An additional two hundred thousands of long-standing Burundian refugees and migrants from the 1970s are also residing in the country in several settlements provided to them by the Tanzanian government.<sup>65</sup>

In the last several years Tanzania has gradually ended its well established 'open-door' asylum policy and there has been growing xenophobia and hostility against refugees. The large amount of influx of refugees from the Great Lakes region put a lot of pressure on the refugee-populated areas in Western Tanzania including increased crime and insecurity, environmental degradation, and shocks to the local economy and communities. The refugee

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<sup>62</sup> A. Betts, J. Milner, 'The Externalisation of EU Asylum Policy: The position of African States', *COMPAS Working Paper No 36* (2006), p. 21, <[www.compas.ox.ac.uk/publications/Working%20papers/WP0636-Betts-Millner.pdf](http://www.compas.ox.ac.uk/publications/Working%20papers/WP0636-Betts-Millner.pdf) 9>, visited 12 June 2008.

<sup>63</sup> *Ibid.* p. 22.

<sup>64</sup> Human Rights Watch, 'Proxy Targets: Civilians in the War in Burundi', Human rights Watch, New York Mar. 1998

<sup>65</sup> Interview with Hashim Sharief, Data Manager UNHCR Field Office Kasulu Tanzania, on several occasions between 13.12.2006- 22.12.2006.

populations in Tanzania have always contained militants, from the southern African refugees of the past to the present day populations from Rwanda, Burundi and the Democratic Republic of Congo. Political and military elements intent on cross-border incursions have sought to control and exploit the refugee camps in the Great Lakes region, with serious consequences for host countries. As a result, security in the Tanzanian refugee camps and the surrounding areas has deteriorated. The large refugee camps have also taken an environmental toll on the countryside, as large parts of land have been cleared for the refugee camps and the areas deforested by the refugees in search of firewood for fuel. Additionally, prior to the 1995 elections, Tanzanian opposition politicians sought to exploit local concerns and undermine support for the ruling party attributing crime and land shortages to the government's generous refugee policy.<sup>66</sup>

In 1995, in response to the above-mentioned concerns, the government closed its borders to Burundians seeking refuge. Another event with detrimental effects on the prospect of refugee protection occurred in December 1996 when the Tanzanian army herded some half-million Rwandan refugees over the border back to Rwanda. Among this Rwandan Hutu refugee population, which had fled after the 1994 genocide fearing reprisal from the new Rwandan government were Rwandans responsible for genocide and crimes against the humanity who used the refugee cover to conduct military incursions over the border into Rwanda as well as using terror and force to prevent voluntary return. For two years, the international community remained unwilling, and the Tanzanian government unable, to devote the necessary political or financial resources to screen out combatants or those suspected of genocide. However, the Tanzanian government's action-without regard for whether these Rwandan refugees held a well-founded fear of persecution after return coupled with the use of teargas and sticks to herd them towards the border amounted to a serious violation of international refugee law that prohibits refoulement.<sup>67</sup> In the years following the forced expulsion of Rwandan refugees the anti-refugee sentiments among Tanzanians have notably hardened and during the years of 1997-2004 the government has implemented a range of restrictive refugee policies. Throughout 1997, the Tanzanian government closed the border to Rwandan refugees, although continued to accept Burundian and Congolese refugees. Furthermore, in response to rising security issues in the refugee-populated areas and indications on Burundian rebel activities in Western Tanzania the government ordered the army to 'round-up' all Burundian refugees and confine them to camps.<sup>68</sup>

Since 1998, with the implementation of new refugee legislation, until present, the Tanzanian government has continued to impose restrictive refugee policies with the aim of making the country a less attractive destination for refuge. Notwithstanding the above-mentioned efforts, the

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<sup>66</sup> A Betts, J. Milner, *supra* note 62, pp. 22-26

<sup>67</sup> A. Mahiga, 'Tanzania: A Change of Direction', *Refugees Magazine*, UNHCR (1997), p. 14.

<sup>68</sup> A Betts, J. Milner, *supra* note 62, p. 23.

size of the refugee population continued to increase and by the end of 2001 the numbers of refugees exceeded 500,000, including 350,000 Burundian refugees. In response to what the government perceived as an endless refugee problem it started to push for the early repatriation of the Burundian population. Over the last few years alone the voluntary repatriation of both Burundians and Congolese refugees have been facilitated by the signing of successful peace agreements in several countries in the Great Lakes region. Within a few years the number of refugees residing in Tanzania has dropped significantly, since the launch of an assisted voluntary repatriation programme in 2002, UNHCR have helped more than a quarter of a million people to return to Burundi. Having received hundreds of thousands of refugees over decades, Tanzania is eager to see this long chapter in its history brought to an end.<sup>69</sup> Many of the Burundian refugees views the return of large parts of the refugee population, portrayed by the Tanzanian authorities and UNHCR as voluntary, as forced and the result the hostile attitude towards refugees in Tanzania, the close down of refugee camps and the aggressive promotion of repatriation.<sup>70</sup>

By January 2007 Tanzania hosted just over 685,000 refugees, 285,450 assisted by UNHCR. Among these, 152,100 are from Burundi and 128,170 from The Democratic Republic of Congo.<sup>71</sup> The remaining number is from Somalia and elsewhere. A further 198,000 Burundians, consisting of a group that fled in the early 1970s and their descendants, are also registered with the government in three self-sufficient settlements, which were assisted by UNHCR until the mid-nineties. Additionally, the Tanzanian government estimates that there are 200 000 refugees without official status in the country, the vast majority of whom are believed to have spontaneously settled in Tanzanian villages. While the government considers all these persons illegal immigrants, many have left Burundi and the DRC under the same circumstances as the refugees in the camps, and are likely to achieve refugee status.<sup>72</sup> UNHCR is currently managing 12 refugee camps in the north-western part of Tanzania and has sub/field offices in Kasulu, Kibondo, Kigoma, Lugufu and Ngara. The Tanzanian authorities hope that the majority of the camp-based refugees will return during 2007. At present refugees are facing harsh conditions in Tanzania; confined to camps with no right to work or freedom of movement refugees, depending on assistance from UNHCR and its partners for their survival.<sup>73</sup>

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<sup>69</sup> Interview with Rose Mbewi, Protection Officer UNHCR Field Office Kasulu Tanzania, Kasulu, on several occasions between 13.12.2006-22.12.2006.

<sup>70</sup> Interview with Baraka M. Alley, Registration Officer UNHCR Field Office, Moyovosi 20.12.2006.

<sup>71</sup> UNHCR, Global Appeal- strategies and programmes 2007, p. 105, <[www.unhcr.org](http://www.unhcr.org)>, visited 7 June 2008.

<sup>72</sup> UNHCR, Country Operations Plan-Country: United Republic of Tanzania 2006, para. 1, <[www.unhcr.org](http://www.unhcr.org)>, visited 30 May 2008.

<sup>73</sup> Interview with Rose Mbewi, *supra* note 69.

## 3.2 Identification of refugees

Registration consists of a number of interrelated activities, including identification, recording of data, documentation, verification, case processing, as well as data management and exchange. It is a continuing process to collect, store, update and manage refugee data. It serves as a population management strategy, covering the point of initial displacement to possible implementation of durable solutions. UNHCR has been registering the persons under its mandate since its inception in 1951. The gathering of reliable data on populations of concern has been approached in a variety of ways throughout the years, often depending on the prevailing conditions, resources and ultimate use of the information collected. Although some registration policies, standards, procedures and systems have shared some common elements, there has not been a comprehensive nor unified approach to registration, documentation and data management in refugee situations.<sup>74</sup>

Until the 1970s the registration systems kept pace with the occurrences of refugee situations. During the 1980s, however, registration became more difficult in some of the larger refugee operations, notably in Pakistan, Iran, Ethiopia, Sudan and Somalia. During these operations, the purposes and benefits of “enumeration” were understood differently by the various governments and refugee populations involved. As a result, registration was inconsistent. With no reliable information about the refugee population, local residents became mixed with the refugees and ration-distribution systems became unmanageable. During the last decades the different situations of large scale displacements have posed particular challenges to UNHCR and States performing adequate registration.<sup>75</sup>

In 1994, a package of guidelines and tools for more unified registration practices was launched by UNHCR. By 2001, the Executive Committee of UNHCR issued its first conclusion regarding registration, reiterating the importance of registration as a tool for protection, and calling for the implementation of a programme with common standards for registration to be incorporated into a comprehensive system. Moreover, at the Global Consultations on International Protection in 2001 the participants acknowledged accurate and enhanced registration as an important element of refugee protection.<sup>76</sup> This was further emphasised by the Agenda for Protection, demanding States and UNHCR to improve the identification and documentation of refugees and asylum seekers by the introduction of new techniques, including centrally, biometric identifiers (...) and to share these

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<sup>74</sup> UNHCR, Handbook for Registration, *Provisional Release* (Sept. 2003), p.1, <[www.unhcr.org/static/publ/registration\\_handbook/registration.htm](http://www.unhcr.org/static/publ/registration_handbook/registration.htm)>, visited 28 May 2008.

<sup>75</sup> *Ibid.* p. 5.

<sup>76</sup> UNHCR, Global Consultations on International Protection, <[www.unhcr.org/cgi-bin/texis/vtx/global-consultations?page=home](http://www.unhcr.org/cgi-bin/texis/vtx/global-consultations?page=home)>, visited 13 June 2008.

with a view towards developing a more standardised worldwide registration system.<sup>77</sup>

### 3.2.1 The Registration Handbook

The registration activities performed by UNHCR is partly governed by the Handbook for Registration, an instrument laying down common guidelines and practices to be applied throughout the whole registration process. The Handbook covers the operational aspects of the registration and presents a core methodology for registration. It is one of the main efforts made by the organisation to standardise the registration and management of refugee populations by introducing basic concepts, policy considerations, operational standards for the different levels of registration and specific 'how-to' guidance.<sup>78</sup> The Handbook itself is based on the minimum registration standards enumerated by UNHCR's Executive Committee in its Conclusion No. 91 of October 2001.<sup>79</sup>

### 3.2.2 Project Profile

In 2002, UNHCR initiated its modernisation campaign known as the Project Profile, a programme designed as a long-term strategy to enhance and unify the management of field registration. The project was introduced in Tanzania in Nov 2004. The Profile Team developed a new database application in cooperation with Microsoft. The new software program, ProGres, a standardised system replacing dozens of old and incompatible databases. The system facilitates both the collection, use and sharing of registration data. The Project Profile is set out to strengthen UNHCR's field capacity to accurately estimate e.g. the size of refugee populations as well as to collect, analyse and use population data for protection, planning, implementation and monitoring purposes.

Strategies included in the programme are:

- Strengthening of core registration and population management procedures;
- Development and systematic introduction of counting and survey methods;
- Development of global population management software;
- Introduction of an Automated Fingerprint Information System or similar biometric capability and
- Introduction of fraud- proof identity documentation.<sup>80</sup>

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<sup>77</sup>United Nations (2002), Agenda for Protection; A/AC. 96/965/Add. 1, General Assembly, Executive Committee of the High Commissioner's Programme, 26 June 2002, p. 40.

<sup>78</sup> Handbook for Registration, *supra* note 74, p.2.

<sup>79</sup> Executive Committee Conclusion No. 91(LII) Registration of Refugees and Asylum-Seekers, (Oct. 2001), <[www.unhcr.org/publ/PUBL/3f8e9ce14.pdf](http://www.unhcr.org/publ/PUBL/3f8e9ce14.pdf)>, visited 7 June 2008.

<sup>80</sup> UNHCR, Project Profile and Operational Data Management, UNHCR Tanzania (2007), p. 3, (on file with the author).

### 3.2.3 Registration purposes

According to UNHCR, the overall purpose of identifying and recording the profile of a refugee population is to provide better protection for the individuals. Adequate registration, including the issuance of documentation is considered a prerequisite by UNHCR for the legal and physical protection of refugees. The acknowledged and recorded identity is vital for realising the rights of the refugees e.g. the tracing of family members and family reunification as well as the right not to be returned or expelled.<sup>81</sup>

Registration is also considered to be an essential tool for UNHCR to manage its operations effectively. The population data collected are used while assessing and planning operations and resource distribution, but also used to target the special needs of refugee populations. Registration is also an important tool for the realisation of durable solutions.<sup>82</sup>

The introduction of biometrics has presented a means for UNHCR to achieve a more reliable registration system. In resettlement cases for example, accurate data on individuals facilitate the selection of suitable candidates.<sup>83</sup> From a field work perspective, the most important field of application for the registration data is the management of refugee camps. The data is used in the daily running of the camps. In Tanzania, all data about the individuals are enrolled into the database and used for issues like e.g. statistical reporting, camp management and the administration of durable solutions.<sup>84</sup>

Fingerprinting has had a significant impact on UNHCR operations in Tanzania. Before, the organisation had serious problems with identity fraud and double registration. With the introduction of fingerprints, refugee populations decreased in all camps in Tanzania. In some Burundian camps the population was reduced by approximately 30 %.<sup>85</sup>

So far, regarding camps services, fingerprints are only used in the distribution of food. The fingerprint verification is linked to food distribution through the World Food Programme. Before, the food was dealt out according to the size of the family, by using ration cards equipped with name and size of the family. The information displayed on the ration card was compared to the information in the registration database. When the ration cards are issued today, all family members have to be present to leave their fingerprints. Subsequently, the fingerprints are compared to the registration data, to verify the size of the family. This process is updated every two weeks. If a family member is absent from the verification, he/she is immediately removed from the card. Often families avoid to report the deaths or repatriations of other family members since it affect the food

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<sup>81</sup> Handbook for Registration, *supra* note 74, p. 6.

<sup>82</sup> Interview with Hashim Sharief, *supra* note 65.

<sup>83</sup> Interview with Mathijs Le Rutte, Department for International Protection, UNHCR Headquarters Geneva, 08.05.2007.

<sup>84</sup> Interview with Rose Mbewi, *supra* note 69.

<sup>85</sup> Interview with Hashim Sharief, *supra* note 65.

ration. To get additional food supplies refugees register in several families by using false or double identities.<sup>86</sup>

The use of fingerprints has also helped to limit corruption within UNHCR and its implementing partners by reducing the possibilities for staff members to tamper with individual records or falsify identities etc.<sup>87</sup>

### 3.2.4 Collection

UNHCR collects personal information from all people of concern i.e. refugees, returning refugees, resettled refugees, stateless and internally displaced persons.<sup>88</sup> At present, due to the lack of financial resources, only specific refugee populations are being biometrically registered. UNHCR makes an assessment of where the use of biometric identification is most needed and relevant. The aim is to capture biometric features of as many refugees as possible.<sup>89</sup> The registration of refugees is primarily the responsibility of States and UNHCR assumes an operational role in the activities only if needed.<sup>90</sup> In general, African States have limited resources to spend on registering their inhabitants.

Before Project Profile was initiated, refugees were registered household wise. Today most persons are registered individually. The registration process entails several stages. At the initial registration, information is collected from the household or family. A minimum of information is gathered; size, age cohorts, location and address, names of representatives, country of origin, special needs.<sup>91</sup>

Subsequently, during the individual registration interview basic bio data are collected including name, unique identifying registration, date and place of birth, sex, existing identity number, marital status, special protection and assistance needs, level of education, occupational skills, ethnic origins, religion, language, household and family composition, date of arrival, current location and address, place of origin, photograph, permission to share information.<sup>92</sup> Furthermore, depending on the particular circumstances of each refugee situation, more information might be needed to ensure adequate protection and to achieve durable solutions. This data may include information about family property, means of arrival, personal data about non-accompanying family members, reason for flight, intentions of return, place and date of return, medical or health status, place of local integration, resettlement opportunity, and place and date of resettlement. Additionally, information regarding the refugee status determination is

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<sup>86</sup> Id.

<sup>87</sup> Interview with Rose Mbewi, *supra* note 659.

<sup>88</sup> Handbook for Registration, *supra* note 74, p. 6.

<sup>89</sup> Interview with Mathijs Le Rutte, *supra* note 83.

<sup>90</sup> Handbook for Registration, *supra* note 74, p. 5.

<sup>91</sup> *Ibid.* p.33.

<sup>92</sup> *Ibid.* pp. 25-26.

sometimes gathered. This data may comprise of e.g. personal letters documents, reasons for departure from the country of origin, reasons for fearing persecutions after return to the country of origin, political opinions, affiliations and activities, membership of social group, arrests and detentions, convictions for crimes, experiences of violations of human rights, military services. Furthermore, transit details, including routes taken, countries traversed, and duration of stay *en route* to the country of asylum, point and date of entry into the country of asylum, whether entry into the country of asylum was clandestine or authorised, details on human rights violations in transit.<sup>93</sup>

The amount of information documented by UNHCR depends on how much information is being registered by the host government. In Tanzania UNHCR and the Tanzanian immigration authorities cooperate in determining the refugee status and the information collected is shared between both parties. According to Tanzanian immigration law, all asylum seekers must present themselves to an authorised officer and be registered. Registration practices can vary greatly in the country and are often inconsistent and sometimes not performed at all. The local immigration officers often lack training regarding reception and registration of asylum seekers.<sup>94</sup> UNHCR is registering all refugees living in camps and settlements managed by the organisation. Registration is a precondition for attaining the protection and assistance of UNHCR. If refugees are opposing registration, they will be encouraged to reconsider their position. By informing the persons about the use of the registration data, and by emphasising the fact registration is a prerequisite for help, the ‘persuasion’ is always successful. Rose Mwebi, Protection Officer at UNHCR Field Office in Kasulu, has never experienced that refugees have remained unregistered.<sup>95</sup>

The collection of fingerprints is an enrolment process where a picture of the fingertip is captured, extracted, and encoded to a biometric template. Subsequently, the record of the fingerprint image is deleted, leaving only a template (a series of numbers) for future verification and identification use.

### 3.2.5 Management

As mentioned above, all persons of concern to UNHCR have to be registered, including children. In Tanzania fingerprints are collected from all family members, except features from children less than two years old. This is not an ideal situation since the fingertips of children are not fully developed, thus causing mismatching-problems - false rejection and false acceptance.<sup>96</sup> Hashim Sharief, Data Manager at UNHCR Field Office in

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<sup>93</sup> Interview with Rose Mbewi, *supra* note 69.

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> Interview with Hashim Sharief, *supra* note 65.



Kasulu, estimates that child-fingerprints cause approximately 90% of the false mismatches occurring in the verification process.

When the registration process is completed, the individuals have no access to their personal files nor are they allowed to review the entered data.<sup>97</sup> The registration should be a continuous process, where the information is regularly updated, presenting opportunities for secondary review and correction of inaccurate information. The Handbook does not address the issue of right to access and control of information. Today, refugees lack official rights to rectify or change their personal data if perceived inaccurate or misleading. According to Mbewi, demands for e.g. rectification are dealt with on a case-by-case basis depending on the prevailing circumstances. If an individual claims that the information is incorrect, the Protection Officer is engaged to further analyse the substance of the claim and solve the problem. Solutions vary from case to case<sup>98</sup>

After the personal information has been enrolled into the database, it is never deleted. Instead the information not needed is deregistered. Instead of deleting the personal files of individuals no longer under its protection, UNHCR deregisters the information, meaning that the files are inactivated or closed but not erased. Several different types of deregistration exists. For example, if an individual dies or a fraud identity is detected, that personal record is closed. If a refugee is reintegrated, resettled or has spontaneously departed the individual record is inactivated. According to Sharief, deletion of individual records would give the organisation an extra workload. Frequently, individuals come back for protection by UNHCR.<sup>99</sup>

### 3.2.6 Dissemination

One of the great benefits of the use of the software programme ProGres, is the way the system facilitates exchange of information. Today data can be transferred within seconds from one UNHCR office in the world to another. Moreover, Mathijs Le Rutte, Official at the Department for International Protection at UNHCR Headquarters in Geneva, asserts that the ProGres helps to better protect the data from being interfered by external actors. During data transfers through the ProGres the data is encrypted. To read the transferred data, one needs to have access to the ProGres software and a key to unlock the encryption. Consequently, the data is better protected today than previously when information was stored on physical files and transferred by mail etc.<sup>100</sup>

The ProGres software system has also improved the way the protection of data from misuse and unauthorised disclosure by allowing UNHCR personnel to have access to different levels of information. In Tanzania, UNHCR staff members are permitted 'suitable rights', which means that

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<sup>97</sup> Id.

<sup>98</sup> Interview with Rose Mbewi, *supra* note 69.

<sup>99</sup> Interview with Hashim Sharief, *supra* note 65.

<sup>100</sup> Interview with Mathijs Le Rutte, *supra* note 83.

they are only given access to the information they need to perform their specific duties. To be able to access the ProGres database as a staff member you need to log in to UNHCR network with a login name and a password, and further to connect to the ProGres database you need to be part of the ProGres group and be authorised with an additional login name and password. All actions taken within the database are supervised through an audit table. The audit table registers login and logout records, deleted records and changed records. Furthermore, the access refers to the personal file in its entirety or only to specific parts of it. Additionally, the staff member is allowed either to read the documentation only, or to read and write or to read, write and change written records, depending on his/her specific job description.<sup>101</sup>

The only instrument in control of dissemination of information is the Confidentiality Guidelines.<sup>102</sup> The Guidelines provide basic principles regarding the sharing of registration data to external partners thus not covering exchange of information between different UNHCR offices. Concerning dissemination, the Guidelines make a distinction between two scenarios, governed by different principles. The first scenario refers to the situation when registration data is collected by UNHCR alone. In such cases, the information is considered to be ‘owned’ by the organisation alone. Before the organisation releases any personal information to an external actor, consent has to be collected from the individual in concern. In addition, the refugees should be made aware, from the first instance of the registration process, of the fact that the information could be transferred, and if so to what parties. If refugees were not properly informed initially, consent from each individual needs to be collected before any information can be shared. If the personal data is given under the precondition that the information is for UNHCR use only, the information can never be shared without prior authorisation by the individual.<sup>103</sup> Normally, queries from the country of asylum for personal information regarding an individual, subject to a criminal investigation will be treated as warranted. Especially when UNHCR is the sole source of crucial information, the organisation should not obstruct investigation by referring to obligations of confidentiality.<sup>104</sup>

When the fingerprint registration was first introduced in Tanzania in 2004, concerns were raised among parts of the refugee population.<sup>105</sup> Burundian refugees were worried about the information being shared with other parties like the Tanzanian Ministry of Home Affairs and the Burundian authorities. Many individuals felt as they were being pointed out as criminals because of the association between fingerprinting and criminal behaviour. By reassurances from UNHCR that the fingerprints collected would be used for camp management reasons only the disturbances were eventually settled. In

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<sup>101</sup> Interview with Hashim Sharief, *supra* note 65.

<sup>102</sup> UNHCR, Executive Committee, ‘Confidentiality Guidelines’ of 24 Aug. 2001 (IOM/71/2001-FOM/68/2001), (on file with the author).

<sup>103</sup> Interview with Mathijs Le Rutte, *supra* note 83.

<sup>104</sup> Confidentiality Guidelines, *supra* note 102.

<sup>105</sup> Interview with Hashim Sharief, *supra* note 65.

Lugufu district some Congolese refugees even burned of the skin from their fingers to avoid their fingerprints from being captured.<sup>106</sup> According to Rose Mbewi these unfortunate incidences concerned refugees who were afraid of being detected for fraud or multiple registrations. Today, most refugees accept being fingerprinted and resistance rarely occurs.<sup>107</sup>

According to the Guidelines information is only allowed to be shared, if the transfer serves a specific protection interest, i.e. the exchange must have a positive effect on the protection of refugees. Basic bio-data such as name, age, sex, country of origin is often shared with external partners e.g. implementing partners, the authorities of the host country, and in repatriation cases the authorities of the country of origin. Normally, before information is transferred, UNHCR will confirm that the receiving state has implemented data protection laws, if not, an agreements regarding data protection is concluded between UNHCR and the state receiving the data. According to Le Rutte, it is important that transferred data continues (after the release) to be protected. The data protection agreement will aim at preventing the data from being passed on to third parties lacking legitimate interests in the information.<sup>108</sup>

UNHCR is prepared to share the personal information if it serves a specific protection interest, including sensitive information such as the merits of the refugee status determination, ethnicity, religious belief, medical record and biometric features. Regarding data transfers to the authorities of the home state, the approach is more restrictive. Generally, no information should be shared with the country of origin, except in repatriation cases when basic data e.g. name, age and occupation skills may be shared. The transfer of sensitive information will only be considered after a formal request has been lodged by the requesting party. According to Le Rutte, external actors that may have a legitimate interest of receiving sensitive information could be e.g. the Host State or an implementing partner, involved in camp management. The request should be processed by the Headquarters in Geneva. Until today, UNHCR has not transferred biometric features to any of its external partners. Considering the possibility of future transfers, Le Rutte sees no problems with releasing fingerprint records to e.g. a Host State with a biometric registration system of its own. The registration of refugees is the responsibility of that State, and if possible, UNHCR should assist States in this effort. According to Le Rutte, UNHCR is fully aware of the fact that the personal data and biometrics of refugees is highly sought-after by refugee receiving/donor countries, in particular by States in West Europe. Repeatedly, UNHCR Headquarters has received requests from EU States governments to share the personal data, including biometrics. So far, the only information shared with these States has been statistical reports on the composition of the refugee population and information about specific needs in general. An exception concerns resettlement cases, where receiving States normally are allowed access to most of the information collected by

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<sup>106</sup> Interview with Baraka M. Alley, *supra* note 70.

<sup>107</sup> Interview with Rose Mbewi, *supra* note 69.

<sup>108</sup> Interview with Mathijs Le Rutte, *supra* note 83.

UNHCR on the selected refugees, apart from biometric records.<sup>109</sup> The Guidelines recognise that most problematic is the situation when countries have expressed interest in personal information in the context of combating irregular movements e.g. if they fear that certain asylum seekers may proceed to their territories from a third country. In such cases, UNHCR could share personal information i.e. name, nationality reason for rejection, if the asylum seekers have the requesting country as a final destination and the persons concerned were rejected as refugees by UNHCR in a final decision in the third country. Normally, if countries seek personal information of individuals, suspected of being abroad, regarding criminal investigation, UNHCR could not be expected to cooperate in the same way as with the country of asylum. First, the countries should seek assistance from the country of where the offender or witness is suspected of being present. The Guidelines do not cover the transfer of aggregated and statistical information.

The second scenario relates to the situation where UNHCR and the Host State gathers data collectively through a common registration procedure. According to Le Rutte, it is important early on to inform the refugees that both partners will use the information. Subsequently, UNHCR presupposes that the refugees are aware of and consent to the information being shared between UNHCR and the Host State. Regarding data transfers to other external partners, the same principles as in the first scenario applies. The main concern to UNHCR, regarding data transfers in both scenarios, is how it will be handled by the state after transfer. Often, Host States are poor and have no legislation on data protection. An example of the harmful effects of data transfers, regards Columbian refugees under protection in Costa Rica. The refugees had been registered by UNHCR and the Costa Rican authorities collectively. Subsequently, during repatriation, the Costa Rican authorities released sensitive personal information, e.g. reasons for flight and means of arrival of some of the refugees to the Columbian authorities. Upon return, the refugees were persecuted, tortured, convicted and then executed because of actions that had happened during the flight.<sup>110</sup>

As mentioned before, the transfer of data between different UNHCR Offices is not formally regulated. The prevailing principle is that any information can be shared within the organisation. This principle is now being reevaluated, since the detection of fraud and misuse of information within the organisation. By the implementation of a unified computer system, the potential damage of misuse, such as unauthorised disclosure, has increased immensely. The Headquarters in Geneva is aware of the lack of sufficient data protection. Considering the sensitive nature of the information held by the organisation, enhanced data protection will be one of the top priorities for the organisation in 2008. New guidelines concerning inter-office transfers of data will soon be implemented. Before the information is sent, the reasons for the transfer and the amount of information needed will be assessed. Efforts will also be directed towards establishing a regulation that

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<sup>109</sup> Id.

<sup>110</sup> Id.

is more comprehensive, stipulating both binding obligations and rights for the data subjects and encompassing all aspects of data management e.g. dissemination.<sup>111</sup>

### **3.2 .7 Storage**

The registration data is locally stored in Field Offices. Each office has a main server and several mobile servers used in the campsites where the information is collected. Subsequently, the information on the mobile servers is transferred to the main server. At the Field Office in Kasulu the main server is kept in a locked space on UNHCR compound. Access to the area is only rarely permitted to staff members after authorisation from the data manager. According to Le Rutte, information kept locally promotes the validity and accuracy of the data. It also prevent the information from being misused on a larger scale as could happen if the data was kept in a central database. A central database could significantly raise the risk of the data being disclosed and used for purposes originally not intended for.

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<sup>111</sup> Id.

## 4 The right to privacy

Of all the Human Rights presented in the international catalogues, privacy is perhaps the most difficult to define.<sup>112</sup> Widely, it has been described as ‘the right to be left alone’ and more narrowly as a right to control personal information. Another definition suggests that the right to privacy means, ‘freedom from unwarranted and unreasonable intrusions into activities that society recognises as belonging to the realm of individual autonomy’.<sup>113</sup> The meaning of the ‘sphere of individual autonomy’ has been explained as ‘the field of actions [that] does not touch upon the sphere of liberty of others.’<sup>114</sup> From the beginning privacy was mainly connected to three particular institutions i.e. the protection of the home, the family and the correspondence. Over the last decade, due to the advent of the information society and the rapid progress in communication technology, privacy has come to encompass the secrecy of telecommunications and the protection of personal data.<sup>115</sup>

The modern privacy benchmark can be found in the 1948 Universal Declaration of Human Rights (UDHR).<sup>116</sup> Art 12 UDHR states:

No one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interferences or attacks.

The right to privacy is included in all major Human Rights catalogues<sup>117</sup> apart from the African Charter on Human Rights and People’s Rights.<sup>118</sup> This paper will focus on the right to privacy in Art 17 ICCPR. The wording of Art 17 ICCPR is almost identical to Art 12 UDHR:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks upon his honour or reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

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<sup>112</sup> J. Michael, *Privacy and Human Rights*, (UNESCO 1994), p. 1.

<sup>113</sup> S. Joseph, J. Schultz, M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, (Oxford University Press Oxford 2000), p. 349.

<sup>114</sup> M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, (N.P. Engel, Kehl, Strasbourg, and Arlington, 2005), p.288.

<sup>115</sup> *Id.*

<sup>116</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948

<sup>117</sup> See Art 8 ECHR, Art 11 ACHR, Art 17 ICCPR.

<sup>118</sup> L. Bygrave, *Data Protection Pursuant to the Right to Privacy in Human Rights Treaties International Journal of Law and Information Technology* (1998), p. 251.

## 4.1 Art 17 ICCPR and Data Protection

One component of privacy is the right to intimacy, meaning the right to secrecy from the public sphere of actions, private characteristics or data. The protection of personal data, i.e. informational privacy, represents a special form of respect for intimacy. The right to informational privacy has been identified as (...) the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.<sup>119</sup> Furthermore, it has been defined as (...) the individuals' ability to control the circulation of information relating to him.<sup>120</sup> As far as the ICCPR is concerned, the meaning of privacy for the purpose of Art 17 has not yet been thoroughly decided. The Human Rights Committee has given some guidance about the ambit of Art 17 ICCPR in its General Comment nr 16. According to the Committee, data protection guarantees needs to be regulated by law in both the public and private sectors. The General Comment includes the following deliberations:

As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. (...) The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.<sup>121</sup>

The developments in advanced technology including computer systems with large surveillance capacity has prompted demands for specific rules governing the collection and handling of personal information, resulting in the adoption of various national data protection laws since 1970's. Today, a large body of legal instruments on the protection of personal data can be found both nationally and internationally. The four main international legal instruments are:

1. the CoE Convention on Data Protection;<sup>122</sup>
2. the EC Directive on Data Protection;<sup>123</sup>

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<sup>119</sup> J. Michael, *supra* note 112, p. 3.

<sup>120</sup> *Id.*

<sup>121</sup> General Comment 16, issued 23.3.1988 (UN Doc A/43/40, 180-183; UN Doc CCPR/C/21/Add.6; UN Doc HRI/GEN/1/Rev 1, 21-23), paras. 7, 10.

<sup>122</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No 108), adopted 28.1.1981, in force 1.10.1985.

<sup>123</sup> European Council, Directive 95/46/EC of 24 Okt. 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

3. OECD, Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data;<sup>124</sup>
4. the UN Guidelines Concerning Computerized Personal Data Files;<sup>125</sup>

The international acts draw much of their substance from national laws and they all encompass the same core data principles. The basic principles focuses on the processing (i.e. collection, registration, storage, use and /or dissemination) of personal data and can be summarised as follows:

1. The fair collection principle - personal information must be gathered by fair and lawful means;
2. The minimality principle - the amount of personal data gathered should be limited to what is necessary to achieve the purpose;
3. The purpose specification principle - personal data should be gathered for specified and lawful purposes and not processed in ways that are incompatible with those purposes;
4. The limitation principle - use of personal data for purposes other than those specified should occur only with the consent of the data subject or with legal authority;
5. The data quality principle - personal data should be accurate, complete and relevant in relation to the purposes for which they are processed;
6. The security principle – security measures should be implemented to protect personal data from unintended or unauthorized disclosure, destruction or modification;
7. The individual participation principle – data subjects should be informed of, and given access to, data on them held by others, and be able to rectify these data if inaccurate or misleading;
8. The accountability principle – parties responsible for processing data on other persons should be accountable for complying with the above principles;<sup>126</sup>

Some of the international acts expressly recognise that catalogues of fundamental Human Rights and Freedoms e.g. the UDHR, ICCPR and ECHR provide much of their formal normative basis.<sup>127</sup> Does this actually mean that the principles are covered by right to privacy in Art 17 ICCPR? The fact that the General Comment is more truncated in scope than the core principles, raises the question if it was intended to exhaustively regulate the issue of data protection. The Human Rights Committee focuses mainly on the rights of data subjects to access and to rectify information. Other important aspects such as fair collection, security measures and purposes for collection are only briefly addressed by the Comment. The emphasis put on access and rectification rights seems to indicate broader concerns to be held

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<sup>124</sup> OECD, Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data, (Paris OECD 1980), adopted 23.9.1980.

<sup>125</sup> UN, Guidelines Concerning Computerized Personal Data Files (Doc E/CN.4/1990/72, 20.2.1990), adopted by the Un General Assembly on the 4.12.1990.

<sup>126</sup> L. Bygrave, *supra* note 118, p. 250.

<sup>127</sup> This is manifested in Art 1 of the CoE Convention and Art 1(1) of the EC Directive on Data Protection.



by the Committee, namely guaranteeing that individuals are able to orient themselves and uphold some sort of control over their informational surroundings. If so, to treat the General Comment as merely laying down the basis for Art 17 ICCPR, and not attempting to determine all of the data protection guarantees to Art 17 ICCPR give room to include additional standards.<sup>128</sup>

## 4.2 UNHCR and data protection

This section will analyse the accordance of UNHCR practices with the right to privacy. The legal basis for this analysis will be the core principles mentioned above. First, some arguments to why UNHCR is bound by the obligations relating to data protection pursuant to Art 17 are addressed briefly.

In discussions concerning non-state actors' responsibilities in the area of human rights, the responsibility of the UN is often discarded. Several explanations have been put forward to explain this neglect. Usually, the UN, an organisation directly governed by its members, is not seen as an 'ordinary' non-state actor, because it is perceived to act as a surrogate for States. Further, placing the UN in the same category as other non-state actors in international law such as business corporations and terrorist groups etc. seems objectionable. Further, the actions taken by the UN are commonly seen as being essentially benign, rendering human rights deliberations unnecessary.<sup>129</sup>

The question if the actions of international organisations like the UN are restrained by human right law is disputable. The fact that only States can become parties to human right treaties indicates that the treaties bind only States. If States wanted international organisations to have a human rights mandate they would have given them one, or would do so now.<sup>130</sup> Further, the conveyance of international human rights law has been assigned to special bodies such as the Human Rights Committee. The UN bodies have deliberately been assigned specific functions, and for the organisation to work effectively the different entities should focus exclusively on what they have been mandated to do.<sup>131</sup>

On the other hand, the International Bill of Rights is a UN product. Further, one of the organisations main purposes is to (...) achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms ...<sup>132</sup> If a UN agency breached the provisions set out

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<sup>128</sup> L. Bygrave, *supra* note 118, pp. 252-253.

<sup>129</sup> Philip Alston, *Non-State Actors and Human Rights*, (Oxford University Press Oxford 2005), p. 29.

<sup>130</sup> *Ibid.* p. 9.

<sup>131</sup> *Id.*

<sup>132</sup> Charter of the United Nation, adopted June 26 1945, T.S. 993, in force October 1945, 1 U.N.T.S. XVI, Art. 1(3).

by human right treaties, it could be argued to be a violation of the Charter itself. UNHCR, a non-treaty body of the UN, was established by the General Assembly.<sup>133</sup> Consequently, it is a UN agency acting under the authority of the General Assembly, implying that it is bound by the purposes set out in the Charter. UNHCR is mandated to provide international protection to refugees, by safeguarding the rights of refugees.<sup>134</sup> The rights of refugees includes 'general' human rights as well as rights relating specifically to refugees. Accordingly, by disregarding e.g. the right to privacy one could argue that UNHCR is not doing what it has been mandated to.

## 4.2.1 Legal regulation

The General Comment call for automated processing of data to be regulated by law.<sup>135</sup> According to Art 17 (2) ICCPR State Parties are obligated to regulate the recording, processing, use and conveyance of automated personal data and to protect those affected against misuse by State organs as well as private actors. Today, UNHCR has no legal regulation regarding data protection. The Confidentiality Guidelines, regulating dissemination, can not be seen as equivalent to a legal regulation since it is only an internal document not aimed to be publicly attainable. The fact that the organisation often operates in States without national data protection laws gives further impetus to the issue being comprehensively addressed.

## 4.2.2 Management of personal data

Today, the operational aspects of refugee registration is directed by the guidelines set out in the Registration Handbook. The Handbook provides a core methodology for the registration process by recommending what type of information should be collected and at what stage. In addition it offers practical advice regarding the actual registration procedure.<sup>136</sup> The Handbook is not a binding document and does not secure any rights or obligations for data subjects in case of misuse and mismanagement. The Handbook was adopted in 1994 before UNHCR started to use automated data processing systems and is primarily concerned with manual processing of personal data. An updated version is currently under development.

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<sup>133</sup> UNHCR, Basic Facts, <[www.unhcr.org/basics/BASICS/3b0249c71.html](http://www.unhcr.org/basics/BASICS/3b0249c71.html)>, visited 30 May 2007.

<sup>134</sup> Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (v) of 14 December 1950, General Provision 1.

<sup>135</sup> General Comment nr 16, *supra* note 121.

<sup>136</sup> Handbook for Registration, *supra* note 74, Part 2.

## 4.2.3 The core principles

### 4.2.3.1 Dissemination

The Confidentiality Guidelines is the sole document dealing with the sensitive issue of sharing personal information. Moreover, it is the only document to emanate directly from the Executive Committee concerning refugee registration and the handling of personal data. The act is applicable to situations where the personal data is shared with external partners. As mentioned before, transfers within UNHCR is unregulated and the prevailing idea is that personal information can be shared at any time between different offices. The implementation of Project Profile has had an enormous effect on the exchange of personal data within the organisation. Today, information can be transferred between UNHCR offices within seconds. Several incidences have occurred where staff members have been involved in fraud and misuse of personal data and occasionally transfers between UNHCR Offices has lead to personal information being disclosed to unauthorized parties. To protect sensitive information from unauthorized disclosure, UNHCR Headquarters has recognised the need for the implementation of general directions regarding internal transfers. Furthermore, the organisation has also become aware of the urgent need to update the Confidentiality Guidelines. The special problems regarding the security of automated personal data including biometrics and the use of unified computer systems are not satisfactorily regulated by this document.<sup>137</sup> The introduction of an interconnected computer system offers great operational benefits for UNHCR. Similarly, the Project Profile is threatening the integrity of the personal data. Until now, the organisation has not taken the question of data protection seriously.<sup>138</sup>

### 4.2.3.2 Fair and lawful processing

The obligation to process personal data ‘fairly and lawfully’ is the primary principle of data protection laws since it covers and generates all the following principles.<sup>139</sup> Data which are processed in breach of any statutory provision is processed unlawfully. Hence, an act is to be considered unlawful if is committed in breach of the common law or when it is committed *ultra vires* in breach of the equitable duty of confidence.<sup>140</sup> Fairness in processing is less obvious in meaning but is a broader notion than lawfulness. The concept is hard to define since the general perception of what is fair changes over time. In general terms the fairness criterion means that the data controllers in achieving their data-processing goals must consider the interests and reasonable expectations of the data subjects. There has to exist an acceptable connection between the nature of the collected

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<sup>137</sup> Interview with Mathijs Le Rutte, *supra* note 83.

<sup>138</sup> *Id.*

<sup>139</sup> L. Bygrave, *Data Protection Law – Approaching its rationale, Logic and Limits*, (Kluwer Academic Publishers Group, The Hague, 2002), p.53.

<sup>140</sup> R. Jay, *Data Protection Law and Practice*, (Sweet & Maxwell London 2003), p. 47.

data and the subsequently intended use by the data controller.<sup>141</sup> Additionally, the notion of fairness includes requirements of balance and proportionality, meaning that the collection and further processing must be performed in a way that does not interfere unreasonably with the privacy of the data subjects, nor with their autonomy or integrity.<sup>142</sup> Fair processing of personal data means that the data subjects are not allowed to be unduly pressured to supply data on themselves or to agree to the data being used for particular purposes. In other words, the data controllers should not be able to abuse their monopoly position.<sup>143</sup> The refugee registration is mandatory and the refugees have to supply sensitive information about themselves, otherwise they will not get protection from UNHCR. Clearly, one could argue that this practice invades the right to privacy. Moreover, because of the precarious conditions faced by most of the refugee they have no other option than to abide by the demands of the organisation. In Tanzania, when refugees are resisting to share their personal information, they are always 'successfully persuaded' under the threat of not receiving help from the organisation. Protection from abuse of monopoly is to some extent read into provisions in data protection instruments, consent by the data subject, and the requirement that it is 'freely given'. Regarding the practice of UNHCR it is difficult to estimate the value of the consent given. In many cases it seems like the refugees are 'forced' to leave their personal details, consequently under such circumstances the consent cannot be said to have been given 'freely'. In national systems, to be able to apply for e.g. social benefits the beneficiary is obligated to be registered and leave some personal information with the authorities. Normally however, the beneficiary does not have to supply a biometric trait and other sensitive data such as religious beliefs and political affiliation etc. As a result, a collection of sensitive and intrinsic information requires consent to be explicitly given. In some cases where the information is not as

The fairness concept also poses demands on transparency. It must be obvious to the data subject why the data is being collected to achieve the openness required. Transparency means that the personal data is not allowed to be surreptitiously collected or collected in a manner that deceit the data subject as to the nature of, and purposes for, the data processing. Personal information should be collected directly from the data subject and not from third parties or sources.<sup>144</sup> The Registration Handbook states that refugees should be registered individually. In Tanzania, refugees are interviewed on an individual basis by UNHCR staff. Before 1994, the information was collected household wise, with the head of the family being the spokesperson for the whole family. Usually, UNHCR will only give information about the general causes for the collection of data i.e. to realise the right of the individuals under its protection. More specific information about processing and sharing of data is rarely given during the registration

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<sup>141</sup> P. Blume, *Protection of Informational Privacy*, (Danmarks Jurist Nov. 2002), pp. 31-32.

<sup>142</sup> L. Bygrave, *supra* note 139, p. 5.

<sup>143</sup> *Ibid.* p. 59.

<sup>144</sup> *Id.*

process. In order to make it obvious for the refugees why the personal information is collected and needed, UNHCR would have to give more specific information about the different reasons for collection and the range of application of the personal records. Further, UNHCR has to make sure that the refugees fully understand the implications of being registered with the organisation, and to know what they have 'consented' to.

#### **4.2.3.3 Minimality**

The second core principle of data protection is concerned with the amount of data collected. The principle requires the collection to be kept to a minimum and limited to the extent necessary for achieving the stated purpose(s). Another way to express the principle of minimality is to say that the personal data must be relevant and not excessive to its purposes. Considering the difficult and wide-ranging work of UNHCR in providing protection for refugees and finding durable solutions to diverse refugee situations, clearly to succeed, the organisation needs large amounts of information about the persons under its protection. Personal information such as medical history and condition, ethnicity, occupational skills, reason for flight and previous experiences of human rights violation can be needed for camp management purposes, to fulfil specific protection needs and to see to that refugees are not exposed to danger. It can be difficult to assess whether the data collected by UNHCR is excessive or proportionate to its purposes since the main purpose, to strengthen the rights and protection of refugees, is expressed in such general terms.

Accumulation of personal data is a problem since it renders the data subject insecure. The storage of huge amounts of information violates privacy, whether it is used or not. Consequently, UNHCR should aim at limiting the amount of data collected and stored. Today, the organisation gathers as much information as possible on the people under its protection. According to the minimality principle, UNHCR should restrict the amount of data collected and decide what information is actually needed in specific situations. The fact that UNHCR never deletes the personal files of the refugees could lead to large amounts of data being accumulated. This data accumulation is infringing the privacy of the individuals, whose personal records will be kept by the organisation even after the protection need has expired.

#### **4.2.3.4 Purpose Specification**

The principle is connected to the purposes for which data may be collected and processed and requires that data should be gathered for specified, lawful and /or legitimate purposes and not subsequently processed in a manner incompatible with those purposes.<sup>145</sup> The principle concerns both the promotion of transparency and securing a certain control of the information. According to the principle, the statement of purposes needs to be distinct

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<sup>145</sup> R. Jay, *supra* note 140, p. 59.

and precise.<sup>146</sup> As mentioned above, UNHCR has not explicitly specified the various purposes for data collection. The main official purpose is to secure the protection of refugees. According to the principle of purpose specification UNHCR needs to specify its different purposes for data collection and processing more thoroughly.

#### 4.2.3.5 Information quality

It is vital for the informational privacy that the data collected and stored is correct. The principle of information quality requires data controllers to ensure that only correct and not misleading information is stored and processed. This principle is expressed differently in all of the four international acts on data protection, varying in their scope and stringency. The EC directive and CoE Convention state that personal data shall be (...) accurate and, where necessary, kept up to date.<sup>147</sup> The UN Guidelines lay down an obligation to carry out 'regular checks' in order to keep the information updated.<sup>148</sup> The Registration Handbook point to the fact that registration is a continuous process and recommends that registration records are updated and verified, at a minimum of every 12 months.<sup>149</sup> In Tanzania, the lack of resources has led to individual records not being updated for years. The introduction of Project Profile and the use of new computer software will facilitate the enrolment procedure, leading to the personal files being updated more frequently.

#### 4.2.3.6 Data subject participation and control

This principle enables the data subject to control the information given. Persons should be able to participate in, and have a measure of influence over, the processing of personal data.<sup>150</sup> A part of the principle is 'the right of access, a right stipulated by all data protection instrument. The EC directive gives the data subjects a right to access to data relating to directly to them as well as information about the way the data is used, including the purposes of the processing, the recipients and sources of the data.<sup>151</sup> The UN Guidelines stipulate a right to be informed about the recipients of the data.<sup>152</sup> Additionally, the principle include means to object to the processing of data by others, including rights to have invalid, irrelevant or illegal data etc. rectified or erased. All the international acts grant the data subject the right to have incorrect, misleading or obsolescent data relating to them rectified or deleted by the data controller.

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<sup>146</sup> P. Blume, *supra* note 141, p. 32.

<sup>147</sup> See Art. 5(d) Coe Convention and Art. 6(1)(d) EC Directive.

<sup>148</sup> L. Bygrave, *supra* note 139, p. 62.

<sup>149</sup> Handbook for Registration, *supra* note 74, p. 20.

<sup>150</sup> L. Bygrave, *supra* note 139, p. 73.

<sup>151</sup> See Art. 12 EC Directive.

<sup>152</sup> The UN Guidelines, *supra* note 125, principle 4.

The issue of data subject participation and control is not regulated by UNHCR. Sharief asserts that refugees have no access to their personal files. They have no 'right' to have the information rectified. According to the Registration Handbook, the registration process must include procedures enabling the refugees to e.g. ask questions, file complaints and make suggestions for improvements.<sup>153</sup> In Kasulu, the Field Office has no complaint system in place and deals with complaints on an *ad hoc* basis. Usually, the refugees lodged their complaints by contacting the registration officers or UNHCR camp-management staff. Problems and complaints related to legal rights are handled by the Protection Officer, responsible for the accordance of UNHCR practices with national legislation and international human rights law. By frequently updating the information, the refugees would be able to review and correct misleading data.

#### **4.2.3.7 Disclosure limitation**

The principle requires the disclosure of personal data to third parties to be restricted. Provisions on disclosure limitations are seldom expressed separately in the international data protection instruments but are incorporated into other principles particularly those of fair and lawful processing. As a bare minimum the principle allows data to be disclosed only with the consent of the data subject or by authority of law.<sup>154</sup> According to the Confidentiality Guidelines consent has to be collected from the individual before the information is shared. Either as mentioned above, consent is given during the initial registration, on a general level or it is collected subsequently in connection to the transfer. In Tanzania, the refugees are informed during the initial registration about the possibility of the information being disclosed to third parties if necessary for their protection. Subsequently, the consent to transfers of information is often implied, except in resettlement cases, where specific consent to share information with the receiving State is collected. At present, the organisation has no resources to collect the consent individually prior to the information being transferred to third parties.<sup>155</sup>

#### **4.2.3.8 Information Security**

The principle of information security confirms that only the data controller and others, who are specifically entitled to, are allowed access to the processed data. Data controllers must ensure that only authorised persons gain access to the data for authorised purposes. Furthermore, data controllers have to guarantee that the data is not accidentally destroyed.<sup>156</sup> The main server, placed in a closed area at UNHCR Field Office in Kasulu stores the personal information of all refugees in Tanzania. Only authorised personnel are allowed access to the space. To be granted access permission has to be collected from the data manager. UNHCR compound is protected

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<sup>153</sup> Handbook for Registration, *supra* note 74, p. 33.

<sup>154</sup> L. Bygrave, *supra* note 139, p. 67.

<sup>155</sup> Interview with Mathijs Le Rutte, *supra* note 83.

<sup>156</sup> L. Bygrave, *supra* note 139, p. 66.

by fences and watched by guards. Still break-ins occur. According to Sharief, the main security problem is the risk of alteration and unauthorised disclosure by staff members of UNHCR and its implementing partners.<sup>157</sup> To be able to handle the problem of personnel interfering with the data, several safeguards have been implemented into the software programme ProGres. The most effective safeguards in this aspect is perhaps the restriction of the amount of persons with accession rights. Furthermore, the access is restricted to the data needed to perform the specific duties. An additional safeguard is the audit table, registering the activities taking place within the data system. During data transfers, the information is encrypted to prevent disclosure to unauthorised parties. Enhancing data security is currently one of the main issues dealt with by UNHCR Headquarters. Still, the organisation needs to regulate all aspects of data protection comprehensively.

#### **4.2.3.9 Sensitive information**

The sensitivity principle demands sensitive information to be given extra protection in terms of more stringent controls and higher security than other types of data. Art 8(1) of the EC Directive defines sensitive data as (...) personal data revealing racial or ethnic origin, political opinions, religious and philosophical beliefs, trade union membership or data concerning health or sex life. The principle is certainly relevant concerning UNHCR practices since most of the data collected and stored on refugees is of a sensitive nature. Accordingly, this principle puts an additional pressure on UNHCR to implement measures and safeguards to secure the integrity of the personal information collected and stored by the organisation.

### **4.3 Biometrics and the right to privacy**

A part of the right to privacy in Art 17 ICCPR is the protection of the integrity. Grave and serious intrusions of the personal integrity is covered by the absolute protection against inhuman and degrading treatment in Arts 7 (Prohibition on Torture) and/or 10 of the ICCPR, while less intense interferences such as intentional, trivial insults by executive organs may be deemed to intrude on the right to privacy if they are unlawful or arbitrary.<sup>158</sup> The notion of privacy covers the inviolability of one's body, and can as a corollary interference with the personal integrity involve body searches, mandatory blood samples or compulsory investigations.<sup>159</sup> The prohibition on 'arbitrary' interferences with privacy includes notions of reasonableness in Art 17. The permissible limitations to the right to privacy are not enumerated by the Art, unlike some of the other provisions in the Covenant. Guidance about what purposes justifies interference with privacy can be found in the expressed limitations of other non-absolute

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<sup>157</sup> Interview with Hashim Sharief, *supra* note 65.

<sup>158</sup> M. Nowak, *supra* note 114, p. 295, para 18.

<sup>159</sup> *Id.*



rights of the Covenant e.g. Arts 12(3) (Freedom of movement) 19(3) (Freedom of expression). All non-absolute ICCPR rights can be limited by proportionate measures intended to achieve a valid end.<sup>160</sup> In the case of Art 12, an interference can be justified if ‘necessary to protect national security, public order, public health or the rights and freedoms of others, and according to Art 19 is deemed to be ‘necessary in a democratic society’.<sup>161</sup> The interference with the personal integrity is permissible only when it serves a legitimate purpose and respects the principle of proportionality. Arbitrary interference is elements of injustice, unpredictability and unreasonableness.

The use of biometrics can be described as referring to (...) the measurement and analysis of unique physical or behavioural characteristics (as fingerprints or voice patterns) especially as a means of verifying personal identity.<sup>162</sup> Clearly fingerprinting, however small the intrusion for the integrity of the body may seem, causes an interference with the right to privacy, protected by Art 17 ICCPR. In most democratic societies, the (compulsory) capturing and the further recording of fingerprints into databases have exclusively been permitted by criminal laws regarding suspects of severe criminal acts. Recently, EU States have started to capture the fingerprints of asylum seekers. Since 2003, it is done on Europe-wide scale through the implementation of Eurodac. This practice proves that, concerning third country nationals, governments seem to apply lower standards for respecting the private lives of individuals. An additional example is the bill put forward by the French Immigration Minister, Brice Hortefeux, toughening the rules for immigration by e.g. introducing DNA testing for the families of immigrants, to prove their demands for visas are genuine.<sup>163</sup> Concerning the registration practices of UNHCR the same low standard of respect for the privacy of refugees equally applies.

According to UNHCR, fingerprinting creates a more accurate documentation of refugees. The use of fingerprints is regarded by UNHCR staff as something positive by facilitating the handling of data. It has helped the organisation to limit fraud in a remarkable way, consequently saving money by keeping the consumption of food and relief items down. During the interviews in Tanzania, this purpose of fingerprinting became palpable. The most salient motive for fingerprinting seemed to be to control the refugees living in camps. UNHCR staff in Kasulu considered refugees as causing serious problems by manipulating the registration system, thus claiming more benefits from camp services than entitled to.

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<sup>160</sup> S. Joseph, J. Schultz, M. Castan, *supra* note 113, p. 355.

<sup>161</sup> See Art. 12(3) and 19(3) ICCPR.

<sup>162</sup> D. Sherman, ‘Biometric Technology: The Impact on Privacy’, *CLPE Research Paper* (2005), p. 2, <[www.comparativeresearch.net/papers/CLPE\\_Vol\\_01\\_No\\_01\\_RPS\\_05\\_herman.pdf](http://www.comparativeresearch.net/papers/CLPE_Vol_01_No_01_RPS_05_herman.pdf)>, visited 7 June 2008.

<sup>163</sup> M. Björklund, Tuffare regler för invandrare delar Sarkozys regering, *Dagens Nyheter*, 19 Sept. 2007.

Considering the interference with privacy caused by compulsory fingerprinting the question arises whether a more accurate registration to 'strengthen the right of refugees' and to 'better control the benefits' afforded to refugees can be considered as necessary in a democratic society. An example of a permissible interference with privacy is the mandatory withdrawal of blood for the sake of determining paternity. Since the aim is to realise the legitimate rights of the child and the mother, the interference is considered to be in accordance with Art 17 ICCPR.<sup>164</sup> In comparison with the aim of strengthening the rights of refugees, the emphasis in both situations relates to the legitimate rights of an individual i.e. the rights of the child/mother as well as the rights of refugees. If the protection and rights of the refugees are strengthened, the intrusion could perhaps be considered as permissible and as necessary in a democratic society. The second aim, to control camp services by limiting fraud and double registration, seems more questionable from a legitimate point of view, given that the focus is directed at facilitating UNHCR to manage its operations, by preventing abuse and in the end cutting expenses.

Even if one assumes that these purposes are considered to be legitimate pursuant to Art 17, the question remains if the chosen instrument (fingerprinting) is proportional, necessary or even effective. Clearly, UNHCR did not thoroughly analyse how the use of the Project Profile and the fingerprinting would negatively affect the protection of refugees before putting the practice into use. As been confirmed by Georgiadou, the fingerprinting has not yet affected the commitment to the durable solution of resettlement since the Commission is still having problems with encouraging Member States to extend their national resettlement quotas, not to mention to accept an EU-based resettlement programme. Furthermore, the scale of the problems of abuse by fraud and double registration, has not been officially verified by UNHCR, which makes it hard to assess the proportionality of the means to its purposes. Obviously, the use of fingerprints is effective in relation to the purpose of preventing identity fraud and double registration. It has been shown by the reported reductions of the refugee populations in several Tanzanian camps. Still, considering the interference to privacy caused by mandatory fingerprinting, UNHCR should consider whether there are less onerous ways to achieve the stated purposes. One way would be to further develop more advanced registration documents with photographs, harder to falsify. Instead of comparing fingerprints in the distribution of food, a comparison of a photo of the individual could be made. Furthermore, could it ever be deemed as proportional or necessary in a democratic society to expose such a politically vulnerable and marginalised group of people to additional restrictions and intrusive measures? Certainly not so, if the practice of fingerprint registration bears the risk of seriously undermining rights put down by the international human rights law.

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<sup>164</sup> M. Nowak, *supra* note 114, p. 295. para 18.

## 5 Summarising discussion

This paper has illustrated several purposes to why refugees are being registered and why the use of fingerprints is preferred as a means of making the registration data more accurate. The most significant motive put forward by UNHCR is to provide better protection for refugees. Indeed, accurate information about refugee populations facilitates e.g. the management of camps and can provide more tailored assistance to meet the special needs of different individuals. It also enables resources to be distributed more precisely. By being registered with UNHCR refugees are provided with an opportunity to realise their rights such as e.g. the right to be recognised before the law and rights connected to family reunification etc. Moreover, accurate registration can help to bring about a larger commitment from Western States to the resettlement option.

However, at the same time the enhanced registration practices of UNHCR interferes with other rights. This paper has pointed to e.g. interferences with the right to privacy, leading to the conclusion that registration both fortifies and infringes upon the rights enumerated in international human rights instruments.

The registration practice performed by UNHCR is mandatory, meaning that refugees who choose not to supply UNHCR with detailed personal information will not be assisted by the organisation. What is most alarming is that UNHCR has not put sufficient safeguards in place to protect the sensitive information it holds on refugees. Art 17 ICCPR and the General Comment nr 16 declare that data protection guarantees has to be protected by law. Today, UNHCR hold no such regulation. Moreover, UNHCR is often active in States where such laws are missing on a national level. Art 17 (2) ICCPR obliges States to regulate the recording, use, and conveyance automated personal data to protect those affected against misuse by State organs as well as private actors. The Confidentiality Guidelines is an internal document, laying down recommendations and guiding principles and can therefore not be seen as a legal regulation. The first step for UNHCR to improve data protection would be to launch at set of public and binding data protection rules. Art 17 ICCPR stipulates that the different aspects of data protection, found in the core principles of data protection mentioned in chapter three has to be regulated. By improving the following practices UNHCR would enhance the protection of the personal data of refugees:

- make the registration process more transparent i.e. by giving refugees more detailed information about the purposes for which data is collected and processed. It must be obvious to the refugees why the data is being collected. Further, for the registration to be fair pursuant to the right to privacy, refugees should not feel compelled to have to leave their personal information with the organisation.

Today, as been mentioned before, refugee registration is mandatory. Refugees should not be pressured to supply their personal details.

- keep the amount of information gathered to a minimum instead of collecting and gathering as much personal information as possible. Accumulation of personal data i.e. the storage of huge amounts of data renders the data subjects insecure and violates the right to privacy.
- keep the information accurate by more regular updates of the data. In Tanzania, records can remain unchecked for several years. UNHCR needs to spend more resources on the continuous registration.
- allow the refugees to maintain control over the personal data. Refugees should be able to participate in, and have a measure of influence over the processing of the data. Presently, refugees have no physical access to their personal files, and no right to rectify or object to misleading or inaccurate data being processed. A more regular review will allow refugees to update their personal profiles. Another way to enhance the control is to allow the data subjects to obtain hard copies of the information kept.
- erase outdated information. The current practice of storing personal information of individuals no longer under protection is a clear violation of the right to privacy.

Perhaps the most important aspect of data protection is the question who is allowed access to the data and under what circumstances. The sole UNHCR document concerned herewith is the Confidentiality Guidelines. In sum, according to the document a data transfer can be authorised when the request for information is legitimate or/and as long as it serves a protection interest. For a request of to be legitimate, the author of the request must have a valid aim to obtain the information for a legitimate purpose. The Guidelines does not in detail regulate the issue of legitimacy, and as a corollary the question of what is a legitimate claim can be answered extensively. It portrays a rather liberal attitude within UNHCR concerning data-disclosure, allowing requests to be assessed with both arbitrariness and subjectivity. Moreover, the document actually permits data transfers in situations where the actual protection interest is unidentifiable. One such example, authorised by the Guidelines, is transfers of personal data with requesting States when that country is believed to be the final destination for the asylum seekers and they have been rejected by UNHCR in a final decision in another country. In such cases the purpose of the transfer appears to be to assist asylum States in their efforts to prevent the onward movement of rejected asylum seekers. Should UNHCR be supply States with such information? Is the organisation really mandated to do so?

To prevent the information from reaching the hands of unsuited parties UNHCR should only allow information to be transferred in cases where the protection interest is clear and expressly prohibit data to be transferred in other situations. Further, The Guidelines should only authorise dissemination of personal data to with parties directly involved with the protection of the individual in question.

Implementing more stringent rules concerning data transfers could become difficult, considering that the decision-making body, the Executive Committee, consists of many representatives from countries with a specific interest in keeping the information ‘obtainable’. Today, UNHCR are often requested to share the personal details, including biometric features, of refugees with e.g. EU Member States. So far, the only information disseminated in such situations is statistical reports etc. Consequently, at present the EU and its Member States has no access to the personal information of refugees held by UNHCR. This scenario could however change in the future.

The EU and UNHCR have now started to collaborate in the area of refugee identification. In Lampedusa for example, UNHCR has been assisting the Italian immigration authorities with the initial screening of migrants. The European Commission is eager to extent the cooperation further, to encompass new projects such as the establishment of e.g. mobile refugee teams. The financial support given by the EU to update UNHCR registration practices is another example of cooperation regarding the identification of refugees. The scenario can be compared with EU projects in other countries, like remote policing in Ukraine. In both scenarios the EU has contributed to develop data systems to collect, monitor and exchange information on individuals and goods potentially *en route* to the Union. Undoubtedly, the EU has a clear interest in gaining access to the information held by UNHCR. Moreover, the EU now directs its resources through UNHCR towards the biometric registration of refugees in the Maghreb region and in the area surrounding Iraq; large areas of transit and origin of refugees.

As been mentioned above, one of EU’s main concerns in the area of migration are those third country nationals, arriving on EU territory whose identity is disputed and unknown e.g. asylum seekers without documents. The focus within the EU is directed towards flows of migrants instead of the physical borders themselves. Through a combination of immigration surveillance and increasingly deterritorialised border control, the ‘risky’ migrants are identified and subsequently kept under supervision. The EU risk management regime consists of a comprehensive monitoring system. The Eurodac, the SIS and VIS, three major databases, contains diverse information about individuals to be shared between the Member States. The surveillance systems imply large amounts of information being gathered. If UNHCR does not pay attention to their low levels of data protection, the personal records of refugees could become for the EU to

If personal data would end up in European database systems it could be used to e.g. speed up the return of asylum seekers by restrictive policies such as the use of readmission agreements and the safe third country rules; policies seriously undermining the international protection of refugees by e.g. increasing the risk of *non-refoulement*. The scenario could very well become a reality if the EU continues to influence UNHCR policies by e.g. providing targeted financial assistance to special projects like The Project Profile.

Finally, are UNHCR actions violations of human rights law or not? This paper has put forward some compelling arguments in favour of an affirmative answer to the question. However, the issue of non-state actors' responsibilities under human rights law is disputable. Whether or not UNHCR can be held responsible legally, its actions in the area of refugee registration will still be a matter of political liability.

# Bibliography

## Literature:

Alston, Philip(ed), *Non-State Actors and Human Rights*, Oxford: Oxford University Press, 2005

Bigo Didier (2000) "Liaison Officers in Europe: New Officers in the European Security Field" in James Sheptycki (ed), *Issues in Transnational Policing*, Routledge, London

Blume Peter (2002) "Protection of Informational Privacy", Danmarks Jurist Nov. 2002

Bygrave Lee (2002) "Data Protection Law – Approaching its rationale, Logic and Limits", Kluwer Academic Publishers Group, The Hague 2002

Jay Rosemary (2003) "Data Protection Law and Practice", (2:nd edition 2003), Sweet & Maxwell, London 2003

Jones T and Newburn T, *Private Security and Public Policing*, (1998), Oxford: Oxford University Press.

Joseph Sarah, Schultz Jenny, Castan Melissa (2000), *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2nd ed, 2004), Oxford: Oxford University Press

Michael James, *Privacy and Human Rights*, UNESCO 1994

Nowak Manfred, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd rev ed. 2005), N.P. Engel, Kehl, Strasbourg, and Arlington, 2005

## Articles:

Betts Alexander, James Milner (2006) "The Externalisation of EU Asylum Policy: The position of African States", *COMPAS Working Paper No 36*, University of Oxford, <[www.compas.ox.ac.uk/publications/Working%20papers/WP0636-Betts-Millner.pdf](http://www.compas.ox.ac.uk/publications/Working%20papers/WP0636-Betts-Millner.pdf) 9>, visited on 12 June 2008

Boswell Christina (2003) "The 'external dimension' of EU immigration and asylum policy", *International Affairs*, Vol. 79 No. 3, Blackwell Publishing, Oxford

Bunyan Tony (2005), "While Europe sleeps", European Civil Liberties Network, <[www.ecln.org/essays/essay-11.pdf](http://www.ecln.org/essays/essay-11.pdf)>, visited on 7 June 2008

Bygrave Lee (1998) "Data Protection Pursuant to the Right to Privacy in Human Rights Treaties", *International Journal of Law and Information Technology*, 1998 Vol.6 No.3, Oxford: Oxford University Press

Feller Erika (2006) "Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come", *International Journal of Refugee Law*, Vol. 18. No.3-4, Oxford University Press

Gammeltoft-Hansen Thomas (2006) "Filtering Out the Risky Migrant Migration Control, Risk theory and the EU", *AMID Working Paper Series*, Nr 52, Akademiet for Migrationsstudier i Danmark, <[http://www.amid.dk/pub/papers/AMID\\_52-2006\\_Thomas\\_Gammeltoft-Hansen.pdf](http://www.amid.dk/pub/papers/AMID_52-2006_Thomas_Gammeltoft-Hansen.pdf)>, visited at 7 June 2008

Garlick Madeline (2006) "The EU Discussions on Extraterritorial Processing: Solution or Conundrum?", *International Journal of Refugee Law*, Vol. 18 No. 3-4, Oxford University Press

Gatev Ivaylo "Very Remote Control: Policing the Outer Perimeter of the EU Neighbourhood", Aston University, (on file with the author)

Haddad Emma (2006) "The Refugee and the International Community: Externalising refugee policy to maintain status quo", *BISA 2006 Conference Papers*, <[www.bisa.ac.uk/2006/online.htm](http://www.bisa.ac.uk/2006/online.htm)>, visited at 30 May 2008

Mahiga Augustine (1997) "Tanzania: A Change of Direction", *Refugees Magazine*, Issue 110, UNHCR 1997

Sherman Darcie (2005) "Biometric Technology: The Impact on Privacy" *CLPE Research Paper 5/2005*, Vol. 01 No .01 (2005), <[www.comparativeresearch.net/papers/CLPE\\_Vol\\_01\\_No\\_01\\_RPS\\_05\\_herman.pdf](http://www.comparativeresearch.net/papers/CLPE_Vol_01_No_01_RPS_05_herman.pdf)>, visited on 7 June 2008

### **International instruments**

Charter of the United Nations, adopted June 26 1945, T.S. 993, in force October 1945, 1 U.N.T.S. XVI

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No 108), adopted 28.1.1981, in force 1.10.1985.

Convention relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22 1954

International Covenant on Civil and Political Rights, U.N. Doc A/6316 (1966), *entered into force* Mar.23, 1976



OECD, Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data, (Paris OECD 1980), adopted 23.9.1980

Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948

UN, Guidelines Concerning Computerized Personal Data Files (Doc E/CN.4/1990/72, 20.2.1990), adopted by the Un General Assembly on the 4.12.1990.

**UN documents:**

General Comment 16, issued 23.3.1988 (UN Doc A/43/40, 180-183;UN Doc CCPR/C/21/Add.6;UN Doc HRI/GEN/1/Rev 1, 21-23

Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (v) of 14 December 1950

UNFPA, *State of world population 2006- A passage to Hope*, available at <[www.unfpa.org/upload/lib\\_pub\\_file/650\\_filename\\_sowp06-en.pdf](http://www.unfpa.org/upload/lib_pub_file/650_filename_sowp06-en.pdf)>, visited 7 June 2008.

UNHCR (2001) “Background paper no. 2: The application of the "safe third country" notion and its impact on the management of flows and on the protection of refugees”, May 2001.

UNHCR (2006) “Country Operations Plan-Country: United Republic of Tanzania”, <[www.unhcr.org](http://www.unhcr.org)>, visited 30 May 2008

UNHCR ( 2001) Executive Committee Conclusion No. 91(LII) “Registration of Refugees and Asylum-Seekers”, October 2001, <[www.unhcr.org/publ/PUBL/3f8e9ce14.pdf](http://www.unhcr.org/publ/PUBL/3f8e9ce14.pdf)>, visited 7 June 2008

UNHCR (2001), Executive Committee “Confidentiality Guidelines” of 24 Aug. 2001 (IOM/71/2001-FOM/68/2001), (on file with the author)

UNHCR, Global Appeal 2007-strategies and programmes, <[www.unhcr.org](http://www.unhcr.org)>, visited 7 June 2008.

UNHCR, Global Consultations on International Protection, <[www.unhcr.org/cgi-bin/texis/vtx/global-consultations?page=home](http://www.unhcr.org/cgi-bin/texis/vtx/global-consultations?page=home)>, visited 13 June 2008.

UNHCR (2003) “Handbook for Registration - *Provisional Release*”, Sept. 2003 UNHCR, <[www.unhcr.org/static/publ/registration\\_handbook/registration.htm](http://www.unhcr.org/static/publ/registration_handbook/registration.htm)>, visited 28 May 2008

UNHCR (2007) “Project Profile and Operational Data Management, 2007 UNHCR Tanzania”, (on file with the author)

UNHCR (2001) “New Directions for Resettlement Policy and Practice”, Standing Committee 21<sup>st</sup> Meeting (doc. EC/51/SC/INF.2), 14 June 2001

UNHCR (2000) “The State of the World’s Refugees: Fifty Years of Humanitarian Action”, Oxford University Press, 2000 Oxford

**EU documents:**

European Commission, Communication from the Commission to the Council ‘On the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin’: “Improving access to durable solutions” COM(2004) 410 final

European Commission, Communication from the Commission to the Council, Reinforcing the Management of the European Union’s Southern Maritime Borders, COM(2006) 733 final

European Commission, Communication on Regional Protection Programmes, COM (2005) 388 final

European Commission, Proposals for a Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Being in the European Union [2002] OJ C 142/02

European Council Decision 2003/170/JHA of 27 Feb. 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States, OJ L 67/28

European Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) OJ No L 213

European Council Directive 95/46/EC of 24 Okt.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, [1995] OJ No L 281

European Council Directive 2005/85/EC of 1 Dec 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. (The Asylum Procedures Directive)

European Council, Note on the Draft Council Regulation on standards for security features and biometrics in passports and travel documents issued by Member States, 13490/04 LIMITE VISA 188 COMIX 613. Brussels. 19 October 2004

European Council, *Presidency Conclusions*, Seville, 22.06.2002.

European Council Regulation EC/343/2003 of 18 Feb. 2003 establishing the criteria and the mechanisms for determining the Member state responsible for examining an asylum application lodged in one of the Member States by a third country national.(Dublin II Regulation) OJ No L 050

European Council Regulation EC/539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. OJ No L 81

European Council Regulation EC/2725/2000 of 11 Dec. 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention [2000] OJ No L 316.

European Council, *The Schengen Acquis*, Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, [2002] OJ No L 239

European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union [2005] OJ No C 53/01

#### **NGO documents:**

ECRE (2005) "The Way Forward: Europe's role in the global refugee protection regime, Towards a European Resettlement Programme", April 2005, <[www.ecre.org/files/ressetlement.pdf](http://www.ecre.org/files/ressetlement.pdf)>, visited on 12 June 2008

Human Rights Watch (1998) "Proxy Targets: Civilians in the War in Burundi", *Human rights Watch*, New York, Mar.1998

Statewatch Analysis, SIS II: fait accompli? Construction of EU's Big Brother database underway, <[www.statewatch.org/news/2005/may/sisII-analysis-may05.pdf](http://www.statewatch.org/news/2005/may/sisII-analysis-may05.pdf)>, visited on 7 June 2008.

#### **Newspaper articles:**

Björklund Marianne "Tuffare regler för invandrare delar Sarkozys regering", *Dagens Nyheter*, 19 Sept. 2007

#### **Interviews:**

Baraka M. Alley, Registration Officer UNHCR Field Office Kasulu Tanzania, Moyovosi 18.12.2006

Georgia Georgiadou, Official at the Sector for Asylum European Commission 16.04.2007 (telephone)

Hashim Sharief, Data Manager UNHCR Field Office Kasulu Tanzania,  
Kasulu, on several occasions between 13.12.2006- 22.12.2006

Mathijs Le Rutte, Department for International Protection, UNHCR  
Headquarters Geneva, 08.05.2007 (telephone)

Rose Mbewi, Protection Officer UNHCR Field Office Kasulu Tanzania,  
Kasulu, on several occasions between 13.12.2006-22.12.2006

Simon Horner, Head of Information Unit at ECHO, 30.01.2007 (telephone)