



# Norwegian proposal to clarify refugee status

by Vigdis Vevstad

In April 2004 a meeting of the EU's Justice and Home Affairs Ministers adopted the Qualification Directive, a set of minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection. The 24 EU members bound by it (Denmark is not included) are required to incorporate the Directive into domestic legislation necessary by 10 October 2006.<sup>1</sup>

The Qualification Directive is the final element in a four-part package of measures aimed at establishing a common European asylum system. It secures a mutual understanding of who is in need of international protection, both under the universal definition of the 1951 Refugee Convention and of those who are in need of subsidiary protection. The Directive includes persons at risk of "serious harm", defined as "... death penalty or execution; or torture or inhuman or degrading treatment..." or a serious and individual threat to "...a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict." It also defines the benefits to be enjoyed by family members of the beneficiaries of refugee status or subsidiary protection status

The Directive has been quite well received by refugee and human rights agencies. The European Council on Refugees and Exiles (ECRE), of which the Norwegian Refugee Council is a member, has welcomed the Directive's recognition of persecution from non-state actors and acknowledgement of child-specific and gender-specific forms of persecution.<sup>2</sup>

However, there is controversy over the different rights granted to those who achieve Convention status as opposed to those who receive subsidiary protection. Discrimina-

tory provisions on Convention status and subsidiary status have been heavily criticised. UNHCR, ECRE and others have argued that any rights accorded to 1951 Refugee Convention refugees should also be granted to all persons afforded subsidiary protection as both categories of protected persons have similar needs and circumstances. Other regional initiatives have indeed done so and granted refugee status to any person in need of international protection. Both the OAU Convention in Africa and the Cartagena Declaration in Latin America contain broadened refugee definitions which include war refugees and victims of massive violations of human rights.

If EU states were to follow suit, the problem of providing differentiated protection to 1951 Convention refugees and those with subsidiary protection status would cease to exist. EU members are able, if they so wish, to introduce more favourable standards as the Directive allows for better conditions than the minimum standards it sets out. As EU states begin transposing the Directive into national legislation and administrative and judicial practice, Europe has an opportunity to make a real difference and place all refugees on an equal footing.

Norway, although not a member of the EU, has recently made a suggestion which could serve as an example for Europe as a whole. A government-appointed expert law committee in October 2004 proposed that persons at risk of the death penalty, torture or other inhuman or degrading treatment or punishment should be given the status of refugees equal to that of refugees who fulfil the requirements of the 1951 Convention. The criteria are similar to those which under EU law qualify for 'subsidiary protection'. If the proposal is accepted by the Norwegian parliament, it will ensure refugee

status to those for whom the state is obliged to grant protection due to the 1951 Convention as well as to those who are covered by other human rights instruments and customary law. EU member states are bound by the same principles of refugee and human rights law as Norway. A broadened refugee definition would therefore be fully in accordance with already existing obligations on protection and discriminatory distinctions between persons in need of international protection would be eliminated.

*Vigdis Vevstad is a special adviser to the Norwegian Refugee Council. She was a member of the expert law committee which proposed a new Norwegian Aliens Act in 2004. Emails: [vigdis.vevstad@nrc.no](mailto:vigdis.vevstad@nrc.no); [vvevstad@online.no](mailto:vvevstad@online.no)*

1. The text of the Directive is at: [http://europa.eu.int/eur-lex/pr/en/oj/dat/2004/L\\_304/L\\_30420040930en00120023.pdf](http://europa.eu.int/eur-lex/pr/en/oj/dat/2004/L_304/L_30420040930en00120023.pdf)

2. [www.ecre.org/statements/qualpro.doc](http://www.ecre.org/statements/qualpro.doc)

**The Norwegian Refugee Council (NRC)** works to provide assistance and protection to refugees and displaced people in Africa, Asia, Europe and the Americas. NRC was founded in 1946 in Oslo.

[www.nrc.no/engindex.htm](http://www.nrc.no/engindex.htm)

The **Global IDP Project** is part of NRC and is an international non-profit organisation that monitors internal displacement caused by conflicts. The IDP Database provides public information about internal displacement in 50 countries.

[www.idpproject.org](http://www.idpproject.org)

The Global IDP Project  
7-9, Chemin de Balxert  
1219 Chatelaine, Geneva.  
Switzerland

Tel: +41 22 799 0700  
Fax: +41 22 799 0701  
Email: [idpproject@nrc.ch](mailto:idpproject@nrc.ch)