



## Statewatch

### EU divided over list of “safe countries of origin” - *Statewatch* calls for the list to be scrapped

#### Introduction

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*Statewatch* is calling for the draft EU common list of “safe countries of origin” to be scrapped. The list was proposed in March as part of the draft EU asylum procedures Directive, which was politically agreed by the member states in April 2004 [8771/04, 30.4.04; see note 1]. A broad coalition of refugee and human rights organisations has already called for this Directive to be withdrawn.

An analysis by *Statewatch* of the development of the EU list, which included the secret positions of 16 of the 25 EU member states and the European Commission, concludes:

- *the “safe country of origin” policy is inherently flawed and will force member states to restrict access to their asylum systems and risks the breach of fundamental rights;*
- *according to the Council’s own criteria, and in the view of the European Commission and a number of member states, the seven African states cannot and should not be seen as entirely “safe” for the return of refugees or asylum-applicants;*
- *the decision-making process has been neither democratic nor transparent and has been unduly rushed; there is clearly significant disagreement among the member states so a common list should not be introduced at the EU level.*

#### The “safe country of origin” policy

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The “safe country of origin” principle allows states to deny refugees access to the asylum system on the grounds that human rights are so well protected in their country of origin that persecution severe enough to cause people to flee

never occurs. The principle is different (though not unrelated) to the “safe third country” rule, under which refugees can be turned away at the EU’s external borders or sent back to “safe” countries through which they have passed to make their asylum applications.

The draft EU asylum procedures Directive provides that asylum applications from nationals on an EU common list of “safe countries of origin” *shall* be considered “unfounded” [article 30B.2], and thus inadmissible. The principle will even apply to States where a person was formerly resident, regardless of whether that person was a citizen of that State or was stateless, widening the traditional scope for applying the new rules.

The UK, which has pushed hardest for the inclusion of safe country of origin rules in the EU asylum legislation, has used its domestic provisions (introduced in 1993) to declare applications “manifestly unfounded” and apply special, accelerated procedures, thus denying applications without substantively considering the claim. The equation is simple: the more safe countries, the fewer admissible asylum applications the EU member states will have to consider. For its part, the United Nations High Commission for Refugees has consistently argued that no country can be declared one hundred per cent safe and that each application must be considered substantively and on its own merits. The politically agreed EU asylum procedures Directive will even allow member states to declare that a part of a country is “safe”.

The draft EU asylum procedures Directive was originally proposed by the European Commission in 2000. Under the Commission proposal, member states would have been allowed to apply the safe country of origin principle as an *option* in their asylum law, subject to certain safeguards. However, the EU Justice and Home Affairs (JHA) Council of October 2003 agreed that Member States would be *required* to apply this principle in their national law, at least for a common list of countries that would be deemed to be safe by all EU Member States. In an analysis for *Statewatch*, Professor Steve Peers described the Council decision as an “assault on human rights” that “crosses the Rubicon”:

*The Council is no longer solely setting minimum standards for protection, which already runs the risk of a competitive 'race to the bottom' by Member States reducing levels of protection in order to deter claims. Now it is at least partly in the business of forcing them to lower standards, setting a low ceiling for protection rather than a low floor. [2]*

Austria had in fact already proposed an EU Regulation on the safe countries issue in the spring of 2003. The EP voted to reject the proposal and the member states showed little interest in adopting it. Then, in June 2003, there was a call to develop a common EU list of safe countries of origin from the

“G5”, a new secret grouping of interior ministry civil servants of the five largest Member States (France, Germany, Italy, Spain, UK), which has begun holding wholly unaccountable meetings to control the development of JHA policy. [3] The establishment of a common list was endorsed by the EU JHA Council in October 2003. In March 2004, the UK Refugee Council accused the UK government of

*playing a central role in driving down standards across Europe... pushing for some of the most controversial aspects of legislation currently making its way through Parliament in Britain to be incorporated into a common European system. [4]*

Then, later in March, just before the draft asylum procedures Directive was to be agreed, a coalition of human rights groups and refugee legal organisations called for its withdrawal:

*“We feel we have no option but to call on the EU to scrap this proposal on asylum procedures which has been shaped in reaction to populist pressures and fears whipped up about a non-existent flood of refugees into the EU... We no longer regard this proposal as credible. It is in breach of the EU's own commitments in the Charter of Fundamental Rights” - Amnesty International. [5]*

Ignoring the views of civil society, the EU member states in the JHA Council “politically agreed” the draft Directive on 30 April 2004. The Dutch presidency has scheduled the measure for formal adoption in December after re-consultation of the European Parliament. The EP is being asked to provide its “Opinion” again because the Council has amended the original Commission proposal to such an extent that the draft agreed by the member states now differs substantially from the text on which the EP was consulted.

### **The proposed EU “common list of safe third countries”**

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The EU Council first released the draft common list of safe countries of origin in March 2004. It includes ten countries:

*Benin, Botswana, Cape Verde, Chile, Costa Rica, Ghana, Mali, Mauritius, Senegal and Uruguay.*

In addition, Bulgaria and Romania will be considered “safe” because of their status as EU candidate states. The designation of seven safe African countries could also be related to longer term plans to create refugee camps in Africa for the return of African refugees. [6]

This list will be adopted as an annex to the draft EU asylum procedures Directive, which requires unanimous agreement by the Council member states,

scheduled for December 2004. However, the annex can be amended in future by a qualified majority vote [Article 30(2)]. The European Parliament will only be “consulted”, and national parliaments will have no input at all. Individual member states will still be free to add additional countries to any national list of safe countries of origin, but will not have the power by themselves to take any states off the EU list permanently (even if this change were limited to the member state in question and regardless of the human rights situation in the supposedly “safe” States).

As part of an “in-depth” assessment by the EU Asylum working party, each of the 25 member states and the European Commission were asked to complete an “assessment template” and provide their opinion on whether the ten proposed countries can be considered “safe”. *Statewatch* has obtained 17 of these opinions which show that there is significant disagreement between the member states and concern over whether any of the seven African countries are “safe”. This undermines the credibility of any future assertions that the countries are actually “safe” or that the list has been agreed “unanimously” by the EU.

African countries: positions of EU member states on whether safe countries of origin

	Benin	Botswana	Cape Verde	Ghana	Mali	Mauritius	Senegal
Austria *	N/A 50%	---	---	N/A 15-30%	N/A 90-94%	---	N/A 20%
Commission	NO	NO	NO	NO	NO	NO	NO
Czech Rep.	YES	YES	YES	YES	YES	YES	YES
Denmark	YES	---	---	YES	---	---	YES
Estonia	NO	YES	YES	NO	NO	YES	YES
Finland	NO	NO	YES	NO	NO	---	NO
France	YES	YES	YES	YES	YES	YES	YES
Germany	NO	---	NO	YES	NO	---	YES
Hungary	YES	YES	YES	YES	YES	YES	YES
Ireland	YES	YES	YES	YES	YES	YES	YES
Malta	YES	YES	YES	NO	YES	YES	NO
Netherlands	---	YES	YES	---	YES	YES	YES
Poland	---	---	---	YES	YES	YES	YES
Portugal	YES	YES	YES	YES	YES	YES	YES
Slovakia	YES	YES	YES	YES	YES	YES	YES
Sweden	NO	YES	YES	NO	YES	NO	NO
UK	---	---	---	YES	---	---	YES

--- denotes that no response was given

\* Austria did not respond to the requested format. Rather they drew attention to the % of the candidate state female population that undergo genital mutilation

South American countries: positions of EU member states on whether safe countries of origin

	Chile	Costa Rica	Uruguay
Austria	---	---	---
Commission	YES	YES	YES
Czech Rep.	YES	YES	YES
Denmark	---	---	---
Estonia	---	YES	YES
Finland	---	---	---
France	YES	YES	YES
Germany	---	---	---
Hungary	YES	YES	YES
Ireland	YES	YES	YES
Malta	YES	YES	YES
Netherlands	---	YES	YES
Poland	---	---	YES
Portugal	YES	YES	---
Slovakia	YES	YES	YES
Sweden	YES	YES	YES
UK	---	---	---

--- denotes that no response was given

**Safe countries: the EU’s criteria**

The EU member states’ delegations to the Council’s Asylum Working Party were asked to what extent each potential “safe country of origin” fulfilled a set of criteria for inclusion on the common EU list [8772/04, 26.5.04; see note 7]. These criteria were set out in an “Assessment Template” based on Annex II of the proposed EU Directive. This states that a democratic system is “a prerequisite for designation”. In addition, within the legal framework, its application and the general political climate, it must be shown that there is “generally and consistently” (meaning over a period of time) no persecution, no torture or inhuman or degrading treatment or punishment, and no threat of indiscriminate violence in situations of international or internal armed conflict.

Member States were also asked to “take into account” the:

*extent to which protection is provided against persecution or mistreatment by means of relevant laws and regulations, and how they are applied, observance of rights and freedoms as established by the*

*European Convention for the protection of Human Rights and Fundamental freedoms.*

Particular stress was placed on rights from which derogation cannot be made under Article 15 (2) of the ECHR, including the right to life (article 2), prohibition of torture (article 3), prohibition of slavery (article 4(1)), prohibition of retro-active punishments and legality of punishments (article 7). Respect of the “non-refoulement principle”, set out in the Geneva Convention, and the availability of judicial remedies against human rights violations, were also included among the criteria.

The Council provided references to material upon which the member states could base their decisions. The majority of this material consisted of US State Department Reports, although some *Amnesty International* and UN Committee Against Torture reports were also included. States were allowed to use and encouraged to share other sources and asked explicitly whether they felt they had sufficient information to make an “in-depth” assessment of the country in question and finally to give a “YES/NO” answer as to whether they would support the inclusion of the ten countries on the EU common list.

### **General observations on the survey process and the responses**

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The member states were given in incredibly short time period in which to respond to the survey. The “assessment template” (questionnaire) is dated 26 May 2004; responses were requested for an “in-depth assessment” by the EU Asylum working party on 15 June. This gave the member states less than three weeks to assess whether the ten countries were suitable for inclusion on the “safe” list. Only 13 of the twenty-five member states responded in time for the working party meeting, and a number of these responses were incomplete. It was noted, frequently by Malta, that there was little information available and very little time to assess the countries on the proposed “safe” list:

*Given the importance of including a country on the minimum common list, determinations must be motivated by ample research and material. It is difficult to make such assertions with just the amount of material provided and the very short timeframe given to make such assessments.*  
[8]

It also appears that some of the non-responding member states based their later assessments on discussions at the 15 June EU meeting, hardly an objective assessment. The Commission was highly critical of the information provided and supplied references to more detailed country reports [9], though it seems unlikely that the other delegations had time to take them into account. It is alarming that a number of EU member states were able to support the inclusion of countries on an EU “safe” list while admitting they had

inadequate time and information to make a credible assessment. It is also alarming that such an unsatisfactory framework can form the basis for agreement on EU law and notable that the European and national parliaments were not even asked for their views.

There are wide disparities in the responses to the Council survey, in terms of both the depth of responses to specific questions and general approach to the “assessment template”. Austria’s responses, for example, were apparently based solely on the extent of “female genital mutilation” [10], while Sweden gave a single response for all the questions. The Czech Republic also inexplicably reversed a number of its initial decisions to oppose the inclusion of a number of the countries on the safe list [11].

[NB: Denmark’s participation in the survey is objectionable since it has opted-out of EU asylum policy. With Denmark is not participating in the asylum procedures Directive, why should the views of the Danish government be sought or taken into account, particularly given that that government is kept in power by the far-right Danish Peoples Party, which holds extremist views about asylum?].

In a second submission to the survey, following the Asylum working party discussions on 15 June 2004, Sweden expressed “some surprise on the great diversity in approach”, reflecting differences in perception of “practical consequences, general meaning and possible political implications” of including countries on the “safe list” [12]. Sweden refuted the principle that a country can be safe for all, stressing that a full examination of every asylum application “must always take place”, but only thinly veiled its concern that few member states appear to share this commitment. Sweden stopped short of opposing the list in its entirety, calling for the deletion of four of the African states: “Benin, Ghana, Mali and Senegal”.

There is also a contradictory streak running through a number of the assertions by member states that countries *are* “safe”. On the one hand member states have highlighted human rights abuses and failure to guarantee the rule of law then on the other they have declared a country safe because its constitution and legal system theoretically prevent those abuses. It is particularly evident in regard to the responses from the member states on the African countries (see further below). The assessments of the situations in the seven African countries make harrowing reading in a number of places, reinforcing the earlier point that these countries should not be considered safe in their entirety, and certainly not at the EU level.

Finally, it should also be pointed out that five of the seven African countries on the EU’s list are already home to significant numbers of refugees (Cape Verde and Mauritius islands). This is particularly important since under the draft EU asylum procedures Directive applications from refugees and other former

residents coming from “safe countries of origin” will also be declared unfounded. Moreover, Senegal, Ghana and Mali have also produced significant numbers of recognised refugees in neighbouring states, further undermining the claim that they are “safe”. Senegal hosts more than 40,000 refugees and more than 11,000 Senegalese nationals are refugees in neighbouring states. There are 28,000 refugees in the UNHCR administered Budumburum refugee camp in Ghana (mainly coming from Liberia and Sierra Leone), while 10,000 Ghanaian refugees who fled ethnic conflicts linked to land disputes in the mid-1990s remain in Togo. In 2001, around 3,000 Malians applied for asylum in Europe.

### Summary of member states’ positions on each country

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Below is a summary of the member states’ responses for each of the ten proposed countries on the EU’s safe country of origin list, highlighting the most serious concerns raised. We have also included information on the refugee situation in each country where this relevant. A conclusion follows and a more detailed analysis of all the responses is available as an appendix to this report.

#### Benin

[9/13 respondents in favour of inclusion on “safe list”]

Both Denmark and Malta supported the inclusion of Benin on the list, but claimed to have insufficient information for their assessment. France also answered yes but asserted that “*Corruption is rife throughout Benin society*” and the “*breadth and the depth of the phenomenon mean that it will be a very long haul*” to reform. France also noted “*excesses can occur in the breaking up of demonstrations*”. Finland, which opposed the inclusion of Benin, argued that the legal and political and climate in that country is not “generally and consistently secure”. This was indicated by corruption in the judicial system and police violence (for example “*extensive mob violence without proper enforcement of justice*”). The Czech Republic changed its original response of no to yes, after the assessment meeting of the EU asylum working party.

[Refugees: “Benin hosted nearly 5,000 refugees at the end of 2003, including more than 1,000 from Togo, some 1,000 from Congo-Brazzaville, nearly 1,000 from Congo-Kinshasa, and about 2,000 from other countries”, see: <http://www.refugees.org/world/countryindex/benin.cfm>]

#### Botswana

[8/13 respondents in favour of inclusion on “safe list”]

The Netherlands supported the inclusion of Botswana on the safe list, but drew attention to the fact that this relied on a single source (a US State department



report). Malta and the Commission again criticised the lack of information available, the Commission highlighted *“concerns are expressed about the fact that homosexuality is illegal and about the death penalty”*. Moreover, although amendment of the constitution is underway, only eight out of 18 ethnic groups in Botswana are officially recognised. Customary Courts administer punishments in the form of lashings, generally against young offenders.

Finland opposed the inclusion of Botswana, noting that although there are democratic structures and general respect for human rights, there is evidence of police violence (include evidence of physical and mental torture) limited press freedom, and the ill treatment of certain minorities in the country (the San groups and Bushmen). There are also occurrences of torture where village courts impose corporal punishment. Although general provisions for a system of effective remedies against violations of rights and freedoms exist, *“some problems with trials (fairness and length) and with representation in customary courts”* were reported.

The Czech republic also opposed the inclusion of Botswana, highlighting inadequate safeguards for a free and fair trial. It also noted that although

*“the de jure and de facto existence of the capital punishment as such may not necessarily hinder including a country on the minimum common list... it must be established that both the legislation and judicial practice of the country provide free and fair trial including adequate legal counseling”*.

On the 1<sup>st</sup> of July, the Czech Republic withdrew their objections, claiming that *“Generally there are no major obstacles to put Botswana in the list of countries of safe origin”*.

[Refugees: “Botswana hosted some 3,000 refugees and asylum seekers at the end of 2000, primarily from Namibia and Angola”. See: <http://www.refugees.org/world/countryrpt/africa/botswana.htm>]

### Cape Verde

[11/13 respondents in favour of inclusion on “safe list”]

Denmark responded that it did not “have sufficient experience to reply to this question” [whether “safe”] and drew attention to the US State Department reports on Cape Verde from February 2004, stating that the *“police continued to beat persons in custody and detention”*. Finland and the Czech Republic both supported the inclusion of Cape Verde on the safe list but drew attention to limitations on press freedom, discrimination and violence against women, child abuse and unchecked police violence. France said that while *“The*

*democratic nature of the regime is indisputable”, “it may be noted that the courts are overworked, and that there are only a few judges, who sometimes have incomplete training. Guarantees in this area might therefore sometimes be considered as having room for improvement”.* Malta and Slovakia also commented on the inadequate information and time frame for the assessment of Cape Verde.

Germany opposed its inclusion on the list, on the basis of reports of police abuse, overworked legal systems with lengthy proceedings and poor prison conditions. Germany also noted that *“Following the 2001 elections, the government began taking action against alleged human rights violations, although no effective measures against them have been introduced”.* Ultimately, *“There is no guarantee that human rights really will be observed”.* The European Commission changed its response from no to yes after the Asylum Working Party meeting, but did not withdraw its observations that the *“Government rarely enforces law prohibiting child labour”* and

*“Investigation into allegations of human rights abuses by police did not result in any legal action against the perpetrators”.*

Portugal made the observation that although a US State Department report *“points out some difficulties on the human rights issues”, “in global terms, its appreciation is very positive”.* The Portuguese then went on to claim that EU Member States also have

*“problems with police mistreatment and abuse of detainees, some limits on assembly and association, some government and societal discrimination against minority groups and foreign minority religious groups, some wage discrimination towards women and trafficking in persons, particularly women and girls” but that this did not make them “undemocratic”.*

## Chile

[8/12 respondents in favour of inclusion on “safe list”]

The Czech Republic supported the inclusion of Chile on the safe list, *“Despite some negative aspects”,* which include discrimination against women and indigenous people; poor and deteriorating conditions in prisons including physical violence; inadequate prosecution of police violence. France, on the other hand, claimed that there is no question of systematic or institutional violence - the fact that the number of appeals against police abuse more than doubled between 1990 and 2000 (from 83 to 186) is seen to reflect *“citizens’ restored confidence in state institutions”.* Slovakia and Malta supported the inclusion of Chile but drew attention to inadequate information for a full assessment.

## Costa Rica

[9/11 respondents in favour of inclusion on “safe list”]

The Commission supported the inclusion of Costa Rica, but was concerned about children’s rights and children forced into prostitution. Denmark said that it had “not received any asylum seekers from this country [so did] not have the necessary experience to answer this question”. It did, however, draw attention to US State Department country report on Human Rights Practices (2003), which says that the police were “*responsible for some physical abuse*”. Germany described Costa Rica as an “*exemplary democratic state*”.

## Ghana

[11/17 respondents in favour of inclusion on “safe list”]

The Commission provides the staunchest opposition to the inclusion of Ghana on the list of safe countries. It raises concerns over the practice of both the government and its institutions, such as restrictions on the freedoms of peaceful assembly and association, police brutality and poor prison conditions. In addition there are wider problems such as violence in the north, the discrimination and persecution of women (including the practice of FGM), the trafficking of children and their forced labour under a “Trokosi” system of slavery. Similarly, the Czech Republic voiced all of these concerns and ruled against inclusion, only to later update its response and reverse the decision. On the 1<sup>st</sup> July it instead offered a “conditional yes” dependent on further information to be provided by the British delegation and the Commission Service on FGM. Similarly, Ireland updated their response on 6<sup>th</sup> July from “inconclusive” to yes on the basis of “information at Annex B and responses of other Member States to [the survey] and the additional information sources listed by those states”. Denmark also managed to rule in favour of inclusion despite drawing attention to “*life-threatening*” prison conditions, “*severe beatings of suspects in police custody*”, Trokosi practice and ongoing FGM despite 1994 legislation prohibiting it. Portugal, in justifying its ruling on inclusion, acknowledged the lack of legal protection for women from sexual harassment and the continued practice of FGM, children trafficking and child labour, and yet maintained that “*the law provides protection for human rights and punishment for violations of those rights.*” France and the UK appear to not look much beyond Ghana’s status as a democratic state whose government does not display any obvious desire to restrict its citizens’ freedoms of political allegiance, worship and expression, as a basis for inclusion. The UK argues that violence and FGM exists but is not widespread. France argues that Ghana’s courts also do a good job in safeguarding human rights as enshrined in the constitution. In contrast, both Finland and Malta cite judicial corruption as a significant factor in their rejection of Ghana’s suitability.

[Refugees: “Ghana hosted about 12,000 refugees at the end of 2001, including some 9,000 from Liberia, about 2,000 from Sierra Leone, and nearly 1,000 from Togo... Approximately 10,000 Ghanaian refugees remained in Togo at year’s end”. See: <http://www.refugees.org/world/countryrpt/africa/ghana.htm>]

## Mali

[10/17 respondents in favour of inclusion on “safe list”]

Member State responses bear a similar pattern to those of Ghana. The Commission and Finland, in particular, raise concerns over reports of arbitrary arrest, long pre-trial detentions, lengthy trial delays, corruption within the judicial system, domestic violence and discrimination towards women, widespread FGM (with no legislation prohibiting it), child trafficking and forced labour, hereditary servitude relationships, and poor prison conditions. As before the Czech Republic voice similar concerns but reverse their decision from no to conditional yes without amending their response in any way. This time they require further information from the French delegation on Mali and the Commission Service on FGM. In rejecting Mali’s suitability for inclusion in the safe country list, Germany argued that FGM “is the key factor here” with as many as 95% of women undergoing circumcision (a figure supported by Austria and Denmark). Member States ruling in favour of inclusion generally provide little supporting evidence with the exception of France. They point to Articles 166 and 177 of the Penal Code (under which deliberate injury and ill treatment are criminal offences) as a basis for prosecuting those guilty of conducting FGM. According to France the government is reluctant to pass a law expressly banning the practice. In response to claims of serfdom and child trafficking, France emphasises that:

*“designating a country as a safe country of origin does not mean that its nationals cannot be recognised as refugees if fears are justified in specific cases.”*

This logic appears to have informed France’s support for the inclusion of all ten countries on the “safe” list, but begs the question of how broadly the concept might then be applied.

[Refugees: “Mali hosted approximately 9,000 refugees and asylum seekers at the end of 2001, including about 5,000 from Mauritania, 2,000 from Sierra Leone, and 2,000 from various other countries. About 3,000 Malians applied for asylum in Europe during the year. About 4,000 Malians continued to live in Mauritania in refugee-like circumstances. See: <http://www.refugees.org/world/countryrpt/africa/mali.htm>]

## Mauritius

[11/17 respondents in favour of inclusion on “safe list”]

Most Member States claim there to be no general or consistent human rights abuse or persecution, but express reservations. The Commission, Czech Republic (who amended their original position twice), Germany, Malta and Portugal all draw attention to different issues, although only the Commission deemed them serious enough to oppose the inclusion of Mauritius. Reservations include discrimination and violence towards women, reports of police coercion to force confessions and the denial of legal counsel to suspects, deaths in police custody, poor prison conditions, forced child labour and prostitution, government control over television and occasional restrictions on the freedom of assembly. Germany provides a number of case studies of people claiming to have suffered human rights abuse at the hands of the police, and along with Denmark draws particular attention to the recently introduced, and controversial, anti-terrorist legislation which many have claimed to be incompatible with international human rights standards. Not unlike in the UK, it grants police the authority to detain suspects for 36 hours without charge, and allows the government to extradite or deny asylum, and to return them to countries where they may face human rights violations. As before, France provides a detailed response in favour of inclusion, emphasising the legal safeguards afforded to citizens, the Human Rights Commission, the highly active Ministry of Women’s Rights and freedom of the press.

## Senegal

[13/17 respondents in favour of inclusion on “safe list”]

On the face of the number of concerns voiced by member states, it is somewhat surprising that Senegal should receive the most comprehensive backing for inclusion of all the nominated African countries. The Commission, Finland and Malta, in particular, all take issue with a range of concerns and oppose the inclusion of Senegal on the safe list (see appendix). Particular attention is paid by all member states to the ongoing armed conflict in the disputed region of Casamance where there are sporadic clashes between the security forces and the Mouvement des Forces Democratiques de Casamance (MFDC). Here there have been reports both of attacks on civilians by the MFDC’s armed wings, and killings of civilians suspected to support the MFDC by the security forces. As a result Denmark’s approval carries the provision that members of the MFDC should not be included. However if, as the Commission claims, civilians believed only to have links with the MFDC are being persecuted, then this would seem insufficient. Similarly the UK acknowledges that

*“due to the conflict in the Casamance region there will almost certainly be some applicants who have a valid claim to asylum.”*

For the UK, however, this is not reason enough to oppose the inclusion of Senegal on the safe list, neither is the more general human rights abuse that occurs “in limited circumstances”.

Once again the Czech Republic performed an emphatic U-turn, reversing its original answer of no to a conditional yes pending the provision of information from the French delegation on Senegal and the Commission Service on FGM. They had originally argued that

*“due to problems with discrimination against women and violence against them including FGM and government unwillingness to prosecute past crimes committed with Casamance insurgency we would support the option of not including Senegal on the list of safe countries of origin.”*

Now problems have been demoted to reservations. “FGM as a minor problem persist[s]” and the conflict within the Casamance region is “diminishing”.

It is also difficult to understand how Germany has found in favour of inclusion when it reports cases of torture and arbitrary arrest and concludes that *“those responsible...are only rarely investigated”* and *“to date, no members of the armed forces, the gendarmerie or the police have been actually convicted of human rights violations in Senegal.”* Portugal also highlights a range of human rights abuses but concludes that *“the law provides protection for human rights and punishments for violations of those rights.”*

[Refugees: Approximately 10,000 Senegalese were refugees at the end of 2001, including about 6,000 in Guinea-Bissau and an estimated 5,000 in Gambia. Some 5,000 Senegalese were internally displaced. Approximately 15,000 Senegalese became newly uprooted during 2001, but many of them returned home a few months later. Senegal hosted more than 40,000 refugees and asylum seekers at the end of 2001, including an estimated 40,000 from Mauritania, and about 3,000 from various other African countries. See: <http://www.refugees.org/world/countryrpt/africa/senegal.htm>]

### Uruguay

[11/17 respondents in favour of inclusion on “safe list”, though the six not to answer yes responded with “N/A” or did not respond at all]

There exists a broad consensus between Member States that, since the return to democracy in 1985, Uruguay has operated as a democracy with fair and transparent elections. Some do express concerns and reservations, but none

severe enough to warrant voting against inclusion, though several states do not provide an answer. Germany in particular offers a detailed response and then leaves the final field blank with no explanation. Their chief concern, and the one most frequently raised, is that of Uruguay's inadequate prison service. France puts the level of overcrowding at 220% of capacity. This, France claims, along with insufficient training for wardens, is mainly due to budgetary problems. The German response claims that "according to the Director of the National Prison Service, the whole system is close to collapse. Against this background, there is a lack of detailed, up-to-date information...which could have a bearing on the decision." The Czech Republic also expresses concern at discrimination directed towards women and the black minority, police violence and a legal system suffering several inadequacies. Germany claims

*"in 2003 there were reports of police violence including abuse of prisoners in the jails and police stations...and of court cases sometimes lasting many years, resulting in lengthy pre-trial detention."*

Of particular note is Malta's reversal of its decision from no to yes without changing any of their answers to the preceding questions. Having first claimed that

*"although the legal and/or constitutional provisions of Uruguay may indicate the existence of fundamental rights and freedoms for its citizens, there is the concern that the general circumstances of Uruguay, as demonstrated in the illustrations set out throughout this assessment, do not indicate this country to be generally and consistently safe yet".*

Instead, now

*"despite some concerns relating to Uruguay's human rights track record, which at present seem to be more of a sporadic nature, it appears that there is general compliance..."*

See appendix to this report with detailed analysis of all the responses [see: <http://www.statewatch.org/news/2004/sep/safe-countries-Appendix.pdf>]

## Conclusion

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The "safe country of origin" principle is a reviled and contradictory policy. On the one hand the member states have highlighted a catalogue of human rights concerns in countries on the proposed list, then with the other are declaring these countries safe because their legal systems theoretically prevent those abuses.

It is alarming that a number of EU member states were able to support the inclusion of countries on the “safe” list while admitting they had inadequate time and information to make a credible assessment.

The member states are clearly divided over this policy and since it requires unanimity in the Council it should be scrapped.

By the EU’s own criteria the seven African states on the proposed EU list cannot be seen as 100 per cent “safe” or used as a basis for declaring asylum applications “unfounded” and inadmissible. It is this policy, not asylum-seekers, whose claims are “manifestly unfounded”.

### Notes/references

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1. Draft EU asylum procedures directive, Council document 8771/04, 30.4.04:  
<http://www.statewatch.org/news/2004/may/Dir-min-stan-proced.pdf>
2. “EU asylum procedures: an assault on human rights?”, Steve Peers, *Statewatch News Online*, November 2003:  
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<http://register.consilium.eu.int/pdf/en/04/st08/st08772.en04.pdf>
8. Reply from Malta, Council doc. 8772/04 ADD 3
9. Replies from Commission, Council docs. 8772/04 ADD 14 & ADD 24
10. Reply from Austria, Council doc. 8772/04 ADD 1



11. Replies from Czech Republic, Council doc. 8772/04 ADD 8 & ADD 8 COR 1

12. Supplementary reply from Sweden, 8772/04 ADD 19

**Other member state replies used in the compilation of this report**

- Czech Republic: Council doc. 8772/04 ADD 8 COR 2

- Denmark: Council doc. 8772/04 ADD 11

- Estonia: Council doc. 8772/04 ADD 2

- Finland: Council docs. 8772/04 ADD 15 & ADD 21

- France: Council docs. 8772/04 ADD 18 & ADD 25

- Germany: Council doc. 8772/04 ADD 16

- Hungary: Council doc. 8772/04 ADD 12

- Ireland: Council docs. 8772/04 ADD 13 & ADD 23

- Malta: Council docs. 8772/04 ADD 3 & ADD 22

- Netherlands: Council doc. 8772/04 ADD 4

- Poland: Council doc. 8772/04 ADD 7

- Portugal: Council docs. 8772/04 ADD 9 & 8772/04 ADD 20

- Slovakia: Council doc. 8772/04 ADD 6

- Sweden: Council doc. 8772/04 ADD 7

- UK: Council docs. 8772/04 ADD 5 & ADD 5 COR 1

[Note: active links to documents are on:

<http://www.statewatch.org/news/2004/sep/safe-countires-links.htm>]

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