

## UNHCR, Refugee Protection and International Migration

### Basic precepts

1. During the past decade, considerable attention has been given to the linkage between the movement of refugees and asylum seekers and the broader phenomenon of international migration. This paper is intended to clarify UNHCR's role in relation to this linkage and to identify those aspects of international migration which are of particular concern and interest to the Office.
2. UNHCR's position with regard to the relationship between refugee protection and international migration is founded on two basic precepts. First, the Office considers refugees to be a distinct category of people, by virtue of the fact that they are, as specified in the 1951 UN Refugee Convention, outside of their country of nationality and are unable or unwilling to return there because of a well-founded fear of persecution for reasons of their race, religion, nationality, membership in a particular social group or political opinion.
3. In accordance with other international agreements, such as the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration, UNHCR also recognizes that the refugee notion has been broadened to encompass other people who have fled events that pose a serious threat to their life and liberty. The refugee protection regime is premised on the international community's recognition of the specific rights and needs of refugees and other people in need of international protection, as well as the obligation of states to refrain from returning them to countries where their life or liberty would be at risk. UNHCR consequently opposes any attempt to put in question the distinctive situation of refugees and other people of concern to the Office, their need for international protection and their right to seek and enjoy asylum in another state.
4. Second, UNHCR's mandate is to provide protection and solutions for refugees and other forcibly displaced people. UNHCR does not consider itself to be a migration organization, nor does it consider its activities to fall within the function that is commonly described as 'migration management'. The Office also has no interest in seeing migration situations turned into or managed as if they were refugee situations.
5. At the same time, it is evident that patterns of human mobility have become increasingly complex in recent years, and that refugee and migratory movements now intersect in a number of different ways. It is because of this intersection that UNHCR has found it both necessary and desirable to engage with migration issues that impact upon

the Office's mandated functions of refugee protection and solutions. The various points of intersection between refugee protection and international migration, as well as UNHCR's respective interests and potential role in this area, are set out in the following sections of the paper.

### **Mixed and irregular movements**

6. Movements of people from one country and continent to another may include some who are in need of international protection and others who are not. This is likely to be the case when, as often happens, a country of origin is simultaneously affected by human rights violations, economic decline and an absence of livelihoods opportunities. Such flows of people, involving both refugees and migrants, are commonly referred to as 'mixed movements'.

7. When the people involved in such movements claim refugee status in another state, they are often designated as 'asylum seekers', an interim categorization that is used pending the time when a decision is made on their case.<sup>1</sup> Some of those asylum seekers will eventually be recognized as refugees, some will have their claims rejected, while others will be given some form of protection or residence permit in their country of destination, even if they are not formally granted refugee status.<sup>2</sup>

8. People who are moving from one country or continent to another, whether or not they meet the criteria for refugee status, often engage in unauthorized or undocumented forms of movement, making use of similar routes, employing the services of the same smugglers and obtaining fraudulent travel documents from the same suppliers. While these similarities have no bearing on the fundamental distinction between refugees and non-refugees, they have contributed towards a blurring of the distinction between refugees and migrants. Indeed, it has become clear that politicians, the public and the media in many parts of the world are unable (and in some cases unwilling) to appreciate that distinction, especially in situations where considerable numbers of migrants who manifestly have no need for international protection submit applications for refugee status, remain in the asylum system for extended periods of time and remain in the country after their application has been rejected.

9. To stem irregular migration and curb the abuse of asylum systems, many states have introduced a range of measures that are intended to prevent and deter foreign nationals from arriving on their territory and submitting claims to refugee status. One of UNHCR's principal concerns is that the restrictive measures introduced to curb irregular migration (including smuggling and trafficking) are indiscriminate in their application and prevent refugees from gaining access to the territory and asylum procedure of another state.

10. A principal challenge for the international community is to develop responses which combine a coherent approach to the management of migration with the effective protection of refugees, two functions which UNHCR considers to be distinct but complementary and mutually reinforcing. On one hand, unregulated migration often

entails high levels of human suffering, places serious strains on national asylum systems and provokes public and political hostility towards foreign nationals, thereby undermining the objective of effective refugee protection. On the other hand, refugees and asylum seekers who are unable to find protection where and when they need it, are liable to move on in an irregular manner, looking for safety and security in other countries or other parts of the world. Such movements evidently undermine efforts to attain the objective of coherent migration management.

11. In the context of mixed movements, UNHCR's specific and primary interest is to ensure that protection is available to asylum seekers who are moving for refugee-related reasons. At the same time, and by virtue of its mandate for the protection of refugees, UNHCR has a broader interest in initiatives that are intended to reduce the number of migrants who move in an irregular manner and who submit unfounded applications for refugee status. These include, for example, the establishment of migration information programmes, the return of individuals who do not qualify for refugee status in safety and dignity, and the establishment of programmes that enable non-refugees to migrate in a safe and legal manner. UNHCR is particularly concerned to reduce the pressure placed on national asylum systems by irregular migrants who submit applications for refugee status because they have no other means of entering and remaining in their country of destination.

12. UNHCR's mandate does not normally extend to an engagement with migrants without a valid claim to international protection but who have nevertheless become destitute or vulnerable to human rights abuses in the course of their journey. UNHCR may, however, use its good offices to ensure that other actors (states, IOM and civil society organizations) assume responsibility for the welfare of such people. In situations where people are found at sea, it is clearly of secondary importance whether an individual meets the refugee definition or not. In accordance with longstanding maritime tradition, the first priority must be to protect the right to life by ensuring that those people are rescued and disembarked in a timely and safe manner.

13. While UNHCR has a specific mandate for the protection of refugees, the Office underlines the importance of ensuring that the rights and labour standards of all migrants are upheld. In this respect, UNHCR recalls that the core human rights instruments are universal in their application and generally apply to migrants as well as citizens. UNHCR also upholds the principle that entering a country in violation of its immigration laws does not deprive migrants of their fundamental human rights nor does it affect the obligation of states to protect people who have moved in an irregular manner.

### **From refugee to mixed movements**

14. A refugee movement may in the course of time become a 'mixed movement', involving some people who move for refugee-related reasons and some who are motivated by other considerations. Between the late 1970s and mid-1980s, for example, the international response to the exodus from Viet Nam was based on the assumption that most if not all of the 'boat people' were leaving their own country for refugee-

related reasons. By the late 1980s, however, when the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) was established, UNHCR and other members of the international community had concluded that this was no longer the case, and that it was necessary to examine Vietnamese asylum claims on an individual basis.

15. In the context of the CPA, UNHCR became involved in a resettlement scheme for those rescued at sea and a programme to support and monitor the return of non-refugees from first asylum countries in the Asia-Pacific region. The CPA was in part made possible by the fact that since 1979, UNHCR had operated a programme of legal migration from Viet Nam, known as the Orderly Departure Programme. As this example suggests, UNHCR's operational involvement with a refugee population may usefully entail or lead to an engagement with other people who have moved or who wish to move from one country to another.

### **Mixed motivations**

16. UNHCR recognizes that when a person decides to leave her or his own country and seek admission to another state, she or he may be motivated by a mixture of fears, uncertainties, hopes and ambitions which are quite difficult to unravel. In the words of UNHCR's refugee status determination (RSD) handbook:

A migrant is a person who, for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a personal nature. If he is motivated exclusively by economic considerations, he is an economic migrant and not a refugee. The distinction between an economic migrant and a refugee is, however, sometimes blurred in the same way as the distinction between economic and political measures in an applicant's country of origin is not always clear.<sup>3</sup>

17. UNHCR believes that fair and effective asylum procedures, supported by accurate and timely country of origin information, make it possible to differentiate between those people who are in need of international protection and those who are not. At the same time, UNHCR's RSD handbook underlines the importance of giving asylum seekers 'the benefit of the doubt' so as to ensure that people whose claims are not clear cut are protected from danger.

### **Onward movements**

18. People who have gained refugee status in one state, whether by means of a refugee status determination procedure or on a *prima facie* basis, may move on to another country or continent. In situations where such refugees are confronted with serious protection problems in their country of asylum, including, for example, threats to their life and liberty and restrictions on their freedom of movement, such onward movements

can legitimately be considered as part of the process of flight and the search for asylum. When this is not the case, and refugees move on to seek a better standard of living or to be reunited with their compatriots, such movements may be better understood as a form of international migration.<sup>4</sup>

19. A refugee who moves on in this manner does not cease to be a refugee or cease to be of concern to UNHCR, but may nevertheless be subject to a country's immigration controls, including return to the country of first asylum if they are readmitted to that country and are able to enjoy asylum there. UNHCR's primary concern in this area is twofold: to ensure that refugees can find adequate protection in their country of first asylum and their region of origin, thereby averting the need for them to undertake onward movements; and to ensure that refugees who undertake such movements are not returned to situations where they would be placed in danger.

### **Changes of status**

20. People who leave their own country for non-refugee related reasons may nevertheless acquire a well-founded fear of persecution in their own country following their departure. An economic migrant may, for example, become a 'refugee *sur place*', when there is an armed conflict or violent change of regime in that person's country of origin, or when the government or other actors in that country begin to inflict human rights violations on the community of which that migrant is a member.

### **Trafficking in persons**

21. A victim of human trafficking may also have a legitimate claim to international protection and become a person of concern to UNHCR. A trafficking victim does not leave his or her country in search of international protection abroad but is recruited and transferred abroad by means of the threat or use of force or other forms of coercion or by the abuse of a position of vulnerability for the purpose of exploitation. Irregular migrants relying on the services of smugglers whom they have willingly contracted may also become victims of trafficking, if the services they originally sought metamorphose into abusive and exploitative trafficking scenarios. They can become a 'refugee *sur place*' if they develop a well-founded fear of persecution vis-à-vis their country of origin while abroad. The impact of the persecution experienced by a victim during the trafficking process coupled with the possible ill-treatment feared upon a return to the country of origin are factors that may contribute to making a trafficked person a refugee *sur place*. For example, a trafficked person might be at risk of re-trafficking or reprisals from members of the trafficking network, or fear being ostracized and discriminated against by the local community and/or family upon return.

22. UNHCR therefore has a responsibility to ensure that victims, or potential victims of trafficking who fear returning to their countries of origin are identified and given access to asylum procedures, and that those whose claim to international protection falls within the refugee definition are recognized as refugees and afforded the corresponding

international protection.<sup>5</sup> UNHCR also has a responsibility to ensure that persons of concern to the Office are protected and prevented from becoming victims of trafficking. This involves addressing the factors that make refugees and internally displaced persons (IDPs) particularly vulnerable to trafficking, such as lack of documentation, clear and durable legal status and residency rights in countries of asylum and access to the civil, social and economic rights essential for the attainment of self-reliance.

### **Migration as an interim solution**

23. While migrants may become refugees, refugees may also become migrants. In a number of situations, people who have left their own country in response to human rights violations and armed conflict have been able to establish livelihoods in their country of asylum. Such people may choose to remain in that country, even if the causes of flight have been removed in their homeland, or they may move on and enter the labour market in another country, even if they have no prospect of integrating in those societies or gaining citizenship there.

24. In such circumstances (epitomized by the situation of many Afghans who are living abroad) remaining abroad as a migrant worker for a period of time may constitute an 'interim solution' that is distinct from the traditional durable solutions of voluntary repatriation, local integration or resettlement. In such contexts, it is essential for UNHCR and other actors (such as the ILO, for example) to ensure that refugees and former refugees are able to benefit from the human rights and labour standards to which they are entitled as migrants. There is also a need to ensure that refugees who are unable to return to their country of origin continue to receive the protection to which they are entitled under international law, especially protection against *refoulement*,

### **The migration and development discourse**

25. In recent years there has been intense interest in the issue of 'migration and development', most of it focused on labour migration and on four specific issues: (i) the developmental impact of remittances; (ii) brain drain; (iii) diaspora investments in countries of origin; and (iv) circular labour migration between countries of origin and destination.

26. While the third and fourth of these issues are of relatively little importance in the refugee context, the same cannot be said of the first and second. There is growing evidence to suggest that refugees and asylum seekers, especially those in the industrialized states, remit significant amounts of money to household and community members, both in countries of origin and to refugees in other asylum countries. Such remittances have played an important role in cushioning some refugees from the impact of reductions and blockages in the provision of assistance, especially in Africa.

27. Remittances may also play a role in permitting family members to remain in their country of origin or first asylum, rather than feeling compelled to move abroad in order

to make ends meet. UNHCR consequently supports the current efforts that the World Bank and other actors are making to reduce the transaction costs of remittances and to reinforce their impact on poverty reduction and development.

28. With regard to the issue of brain drain, it goes without saying that all refugee populations include people whose talents could and should be put to good use, both in countries of asylum and in countries of origin, if and when they choose to return. In this context, UNHCR has an interest in ensuring that refugees are not excluded from or discriminated in national labour markets, and in ensuring that any qualifications and professional credentials they possess are recognized in their country of asylum.

29. While there is growing recognition of the fact that economic migrants contribute to the prosperity of their destination countries, this recognition is not always extended to refugees. Indeed, people of concern to UNHCR are increasingly perceived as a threat to national security, a drain on public resources and a constraint to local development. As a result, serious constraints have often been placed on their right to engage in economic activities.

30. UNHCR has an important role to play in countering these negative perceptions and policies, underlining the fact that refugees have the potential to as 'agents of development' in their country of asylum by boosting production, filling gaps in the labour market and creating new trading and business opportunities. UNHCR also considers that refugees who are able to undertake such activities will be better placed to go back to their country of origin and contribute to its reconstruction, once conditions allow them to return.

### **Social diversity and integration**

31. Once a refugee or asylum seeker arrives in a destination country, she or he may well establish close social relationships with other members of her or his community, irrespective of their legal status and including many who are not in need of international protection.

32. A Sri Lankan refugee living in London, for example, may interact on a daily basis with many other people of Sri Lankan origin, including other refugees and asylum seekers, authorized and unauthorized migrants, naturalized British citizens and British citizens by birth. A Salvadorian refugee in the United States might find herself or himself in a similar position. While such legal distinctions have an evident importance in relation to issues such as asylum, refugee status determination, residency status and naturalization, the social welfare and integration strategies pursued by governments, civil society institutions and UNHCR must evidently relate to and involve such communities as a whole.

33. UNHCR recognizes that the considerable attention given to the issues of access, admission and asylum has tended to divert attention from the challenge of promoting the effective integration of refugees in the countries and communities where they have

settled, and underlines the importance of ensuring that this objective is met. In this respect, the Office considers that valuable insights might be gained from organizations that have expertise in the integration and inclusion of migrant populations.

34. It should also be noted that refugees and asylum seekers, like other migrants and members of ethnic minorities, are often subject to exploitation, discrimination and xenophobia. While public information and advocacy efforts related to the specific situation of refugees and asylum seekers are certainly required, UNHCR also has a legitimate role to play in broader initiatives related to the issues of diversity, tolerance and racial equality.

## **Conclusion**

35. In conclusion, UNHCR considers that it essential to be actively engaged in the issue of international migration if the Office is to effectively discharge its mandate for refugee protection and solutions.

36. UNHCR's primary interests in this area are threefold. First, there is a need to ensure that migration management practices, and in particular border controls, enable a differentiation to be made in the treatment of those people who have protection needs and those who do not. Second, UNHCR wishes to ensure that the ability of refugees to enjoy protection and solutions is not jeopardized by the misuse and abuse of asylum systems by irregular migrants. Finally, while maintaining a fundamental distinction between refugees and migrants, UNHCR considers that its efforts to find protection and solutions for refugees should be built on a thorough understanding of the dynamics of international migration and the migration policies of states, regional bodies and international organizations.

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## Endnotes

<sup>1</sup> This is not the case when refugees are recognized on a *prima facie* basis.

<sup>2</sup> It should be noted, however, that someone who meets the criteria for refugee status is a refugee, irrespective of whether that person has formally been recognized as such. According to UNHCR's *Handbook and Criteria for Determining Refugee Status* (1992) "recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee."

<sup>3</sup> Ibid, paras 62 and 63.

<sup>4</sup> This paper does not enter the difficult discussion that has taken place concerning the precise meaning of 'effective protection' and its relationship to the 'irregularity' of secondary movements.

<sup>5</sup> Detailed guidance on the assessment of asylum claims from victims or potential victims of trafficking can be found in the UNHCR Guidelines on International Protection on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006.