



## Refugee Protection and Displacement in the OSCE Region – Commitments for Protection and Solutions

### UNHCR Contribution to Working Session 6 of the OSCE Review Conference Warsaw, 30 September – 8 October 2010

Addressing contemporary forms of displacement and statelessness is becoming more complex. Insecurity and instability, often compounded by dire social conditions, poor governance, climatic and economic crises have complicated protection responses and solutions to displacement. Against this background, delivering protection requires ensuring the basic rights and freedoms of persons of concern, including refugees, internally displaced persons (IDPs) and others who have been forced to leave their homes or countries, as well as stateless persons. It requires combating racism and various forms of violence against individuals, including gender-based violence. It requires protecting privacy and human dignity, securing fundamental needs such as food, shelter, education and health and addressing the specific needs of vulnerable persons. It requires the early identification of those in need of protection and of the action to address their needs. Delivering protection also requires humanitarian access and humanitarian space: a space of safety for those to be protected and a place of safety for those who work to protect. Ensuring protection warrants a collective response including strong and effective partnerships with and between States, with regional organisations and the UN, NGOs, academia, civil society, host communities and the forcibly displaced and stateless themselves. Last but not least, delivering protection requires sustained political will to put into practice international refugee law and to implement existing OSCE commitments on the matter.

At the end of 2009, there were 43.3 million people forcibly displaced, the highest number since the mid-1990s. Of these, 15.2 million were refugees, of whom 10.4 million fell directly under UNHCR's mandate and some 4.8 million Palestinian refugees under the responsibility of UNRWA. The figure also includes 983,000 asylum-seekers and 27.1 million of people displaced within their countries as a result of armed conflicts. Afghan and Iraqi refugees accounted for almost half of all refugees under UNHCR's responsibility worldwide. One out of four refugees in the world was from Afghanistan. **Some 4.8 million persons of UNHCR's concern are in the OSCE region.** They include some 2.5 million refugees and asylum-seekers, 1.4 million internally displaced persons and some 880,000 returnees, stateless and other persons of concern.

Statelessness has remained a major challenge with an estimated 12 million stateless people worldwide, of which 6.6 million are recorded by UNHCR. The 'invisibility' of stateless persons and a generally limited understanding of their protection needs, remain complicated factors. In

the OSCE region, UNHCR statistics indicate that, at the end of 2009, some 692,000 persons were affected by statelessness.

The absence of a solution for millions of refugees in a protracted displacement situation continues to pose a major dilemma for UNHCR and its partners, to host countries, to the refugees themselves and to the international community at large. UNHCR estimates that some 5.5 million refugees remained in a protracted situation<sup>1</sup> at the end of 2009. While the vast majority of such protracted situations is in Africa and Asia, a protracted refugee situation in the OSCE region can be found in Serbia.

International human rights law, including international refugee law, provides the framework for the protection of refugees and other persons of concern, which aims to secure non-discriminatory enjoyment of their rights, including, notably, the right to seek and enjoy asylum, the principle of non-refoulement, and the right to a nationality and to return to one's country. OSCE's Human Dimension commitments on "Refugees, Displaced Persons, Returnees, and Stateless Persons" reinforce obligations contained in international law, and strive towards their implementation.

Given the intrinsic link between conflict and displacement, the necessity to adequately address the humanitarian and human rights concerns of refugees and IDPs, and the importance of protection-sensitive crisis-management, monitoring, reporting and post-crisis interventions, UNHCR and the OSCE over the past year have further strengthened their close co-operation, including at the field and mission level. This strategic partnership is of particular importance to identify and tackle existing implementation gaps between international frameworks and human dimension commitments, on the one hand, and national and regional practice, on the other.

## Protection Gaps and Challenges

Although war and persecution are old realities, their nature has changed, with lines often blurred between civilians and the military and between military operations and humanitarian action. Conflicts today involve a multiplicity of actors, many of whom demonstrate a clear disregard for humanitarian principles. Ongoing conflict and social instability have increased safety and security concerns, deterred people from fleeing, and hindered **humanitarian access to persons of concern and the delivery of humanitarian aid**, thus limiting the provision of protection and relief.

Also in 2009/10, UNHCR has stressed the need to operate independently of political agendas and in accordance with its purely humanitarian and non-political mandate, and **basic principles of humanitarian action, notably neutrality and impartiality**. Insecurity continued to restrict relevant actors to conduct humanitarian interventions and to reach populations of concern. In some situations, undue emphasis on national sovereignty has had adverse effects, perpetuating the suffering of affected populations further. Restrictions imposed on humanitarian agencies and their staff, have curtailed efforts to deliver relief and protection in a number of operations, also in the OSCE region.

Widespread **sexual and gender-based violence (SGBV)** remained a defining feature of many conflicts. Together with cruelty against children in armed conflict, SGBV is increasingly recognized as a global security concern. Evidence of this is the appointment in 2010 of a Special Representative to the Secretary-General on sexual violence in conflict. Preventing and addressing

---

<sup>1</sup> UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five years or more in a given country.

violence against women and children is also an important area of UNHCR and OSCE co-operation.

People fleeing persecution, armed conflict, generalized violence and massive human rights violations are first and foremost concerned with reaching safety and not being forced back into a situation where their lives or freedom are in danger. The 1951 Convention relating to the Status of Refugees - the cornerstone of international refugee law - requires States to refrain from returning persons at risk of persecution to their home countries either directly or indirectly. Instances of *refoulement* often occur out of the public eye, disguised as voluntary returns or cloaked in new terminology such as “informal deportations”. Forced returns of asylum-seekers and migrants, without assessment of their claims of international protection needs have nevertheless occurred repeatedly in breach of this principle, also in the OSCE region. When *refoulement* occurs, refugee status does not cease and UNHCR maintains its responsibility to monitor and protect the persons concerned.

In some OSCE countries, including those with highly-developed asylum systems, concerns have continued in 2010 regarding restrictive approaches to interpretation of the refugee definition under the 1951 Convention, as well as complementary forms of protection based on human rights and refugee law treaty obligations. Some States have refused protection claims from some applicant groups and effected forced returns to their home countries contrary to UNHCR’s advice and guidance. In the EU, which has striven for over 10 years to establish a Common European Asylum System based on harmonised minimum standards, recognition rates remain widely divergent for asylum-seekers from the same countries of origin. Procedural standards and safeguards in asylum processes are not satisfactory in all European countries. UNHCR continues to work to support states to achieve improvements, including through research and analysis, input to legislation, support to practical co-operation and specific quality initiatives which have yielded some very positive benefits in a number of EU Member States, which have been welcomed by governments, UNHCR and other stakeholders.

UNHCR has also closely followed policy changes and developments on the ground in several OSCE member countries that have impacted directly on Roma populations. While the challenges facing Roma communities are complex, UNHCR has emphasised that measures which may increase their exclusion from society are counterproductive. Based on its protection and statelessness mandates, UNHCR has continued to work to facilitate reintegration of returning Roma refugees in South-Eastern European countries, to improve their documentation and access to social goods, including housing and educational opportunities, and in other areas.

Although status determination mechanisms and procedures exist in all Central Asian countries, except Uzbekistan, access by asylum-seekers from neighbouring countries to the procedures in place is often constrained.

Despite the existence of a comprehensive and long-established legal framework for refugee protection which - in addition to the principle of *non-refoulement* - also includes a range of very practical refugee rights, there remained, also in the OSCE region, a considerable **implementation deficit**. In some places this was because the State concerned had not yet become party to the international refugee instruments - even though this has not hindered other non-signatory States from providing protection to refugees. In other places, this was due to a variety of reasons including lack of resources, limited capacity, or lack of understanding and commitment to transpose international obligations into domestic law and, equally important, state practice.

People move across borders to other countries in search of safety, prosperity or both. Traditional **border control mechanisms** too often fail to recognize and address the protection needs of

persons of concern who are travelling together with others who may not wish to, but - unlike refugees - have no fear of returning home. Offshore border controls proliferate and are often guided by rules falling outside formal legislative frameworks. Maritime search and rescue zones are becoming a new point of reference for deciding on where disembarkation of boat people should occur. Such practices, when coupled with inadequate protection frameworks in many receiving States, put refugees at great risk.

The perception that migrants routinely misuse asylum systems, has an impact on how borders are controlled; on how foreigners entering the country are received; and on whether asylum claims are deemed valid or perceived as unfounded. Several states have introduced or strengthened laws deterring and criminalizing asylum-seekers who have arrived irregularly or overstayed their visas. While UNHCR has consistently recognized the legitimate interest of States to manage immigration and control the entry, stay and removal of migrants, the Office has equally stressed the need **to design mechanisms that are responsive to those seeking international protection**. UNHCR continues to engage with States and regional organisations to ensure that mechanisms are in place at the border enabling persons seeking protection to have access to territory and asylum procedures, for example as Advisory Board member to the OSCE-led Border Management Staff College located in Dushanbe.

Assisting States in the development of protection-sensitive migration frameworks and policies remained and will continue to remain a priority for UNHCR. For example, jointly with the OSCE, IOM and UNRCCA (United Nations Centre for Preventive Diplomacy for Central Asia), UNHCR will organize a regional conference on refugee protection and international migration to be held in Astana, 9-10 November 2010, to identify the main protection challenges in Central Asia's complex mixed migratory context and to discuss the necessary responses to address them.

UNHCR welcomed the adoption of **anti-trafficking measures** and laws in a number of countries. Awareness needs to be strengthened that some trafficked persons may have a need for refugee protection and efforts need to be undertaken to make certain that those who wish to seek asylum are properly identified, cared for and assured of access to procedures. National anti-trafficking laws and policies need to be protection-sensitive and contain proper referral mechanisms between law enforcement, asylum authorities and protection actors. Adequate inter-agency co-ordination and collaboration is critical to address gaps in identifying, assisting and protecting victims of trafficking. For this purpose, UNHCR worked closely and will continue to work closely with the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

The arrival of many children, including many separated from their parents or carers, continued to present a challenge to many states in seeking to respond appropriately to asylum-seekers and people moving for other reasons. In a number of states, the number of separated or unaccompanied asylum-seeking children remained high in 2010, after sharp increases in 2009. Most children arriving alone came from Afghanistan and Somalia. In accordance with the Convention on the Rights of the Child, the best interests of such children should remain a primary consideration in all aspects of their treatment. Improvements are needed in many parts of the OSCE region to, in particular, the provision of access to child protection systems, to appropriate reception and support structures, to child-friendly asylum processes and to qualified guardianship arrangements.

**Detention of refugees and asylum-seekers** remained a concern also in the OSCE region, especially when there are no exceptional grounds; when access to detention facilities by UNHCR or partners is denied; when judicial oversight of detention is inadequate, or when the conditions of detention are below acceptable standards. To address unjustified detention, UNHCR advocates

strongly for the use of effective alternatives to detention, especially for vulnerable people and children.

The global economic crisis has undoubtedly rendered life more difficult for displaced persons. Jobs have been cut, remittances have diminished, and xenophobia has escalated. In many places around the world - also in the OSCE region - refugees and asylum-seekers continued to suffer **intolerance, violence, exploitation, discrimination and xenophobia**. It is important to counter such phenomena and to reach out to local communities in order to address feelings of fear and resentment. To do so, UNHCR cooperates closely with the OSCE's Office for Democratic Institutions and Human Rights.

Stateless people face challenges in exercising their human rights, obtaining identity documents, registering their children and accessing procedures. The development of standards for the **prevention, reduction and protection of stateless persons** therefore continues. In 2009, two OSCE participating States<sup>2</sup> acceded to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons respectively.

Various OSCE countries, for example Georgia through a joint UNHCR/UNICEF project, improved their birth registration systems, so vital for the prevention of statelessness, by waiving specific birth registration requirements and ensuring the birth registration of children belonging to minorities, through systematic outreach efforts and bridging gaps created in the past. Also in Ukraine, together with authorities, UNHCR projects assisted people in acquiring or confirming nationality.

An encouraging regional dynamic could be observed in Central Asia. A regional project on prevention, reduction and protection of stateless persons culminated in a regional conference in Turkmenistan, co-hosted by UNHCR and the OSCE, in which Governments from the region shared best practices and highlighted several remaining obstacles to the eradication of statelessness in the region. Follow-up actions are ongoing.

## Durable Solutions

Too many refugees have remained without viable durable solutions for too long. Resolute and sustained international co-operation is key, particularly for resolving **protracted refugee situations** which require their own tailor-made solution, for which political will is generally the most essential ingredient. Durable solutions need to be looked at in a comprehensive manner and pursued in a complementary way. UNHCR works closely with OSCE missions and participating States in South Eastern Europe to address long term displacement and **protracted refugee situations** in the Balkans.

The reality for many refugees and displaced persons is frequently one of renewed fear, of being an outcast, in their own or someone else's land, and not a sense of security and stability. Although some will manage to return home, safe and dignified return is often impeded by insecurity and instability as well as by economic destitution. In some countries, also in the OSCE region, return and reintegration have been hindered by stalled or failed peace processes, the presence of landmines, lack of reception capacity and shortages of services and livelihood opportunities. The challenge for returnees is often to gain access to the same conditions as other citizens regarding basic needs, such as health care and education. In many operations, UNHCR and other international and national actors support reintegration with protection monitoring and

---

<sup>2</sup>Liechtenstein acceded to both Statelessness Conventions in September 2009, while Hungary acceded to the 1961 Convention in May 2009

programme implementation. However, despite some successes, **2009 saw the lowest global return figure in two decades; and long-term forced displacement remains a reality also in the OSCE region.** In partnership with the OSCE and others, UNHCR will continue to support confidence building, promote dignified and safe return for those who wish to do so, and support the integration of IDPs in adequate conditions at their existing location when no other solution is available.

**Resettlement is a key protection tool and responsibility sharing mechanism** - but benefits only a small number of refugees (1%). The demand for resettlement is increasing, leaving a huge gap between needs and the places on offer. UNHCR estimates that approximately 203,000 people will require resettlement in 2010, while places available are likely to be less than half this figure. In 2009, UNHCR submitted some 128,000 persons for resettlement counting also on considerable generosity by some OSCE participating States.

For refugees who can not or, for a variety of reasons, do not wish to return to their home countries, **local integration** is the preferred durable solution. The acquisition of a nationality by former refugees, however, remains underreported and only limited statistical data are available. In Europe, UNHCR has worked to reduce obstacles to integration.

## Concluding Observations

Refugee protection and support to durable solutions happen in a complex and challenging environment. While conflict, violence and persecution continue to cause displacement, sustainable solutions for hundred thousands of displaced persons are being blocked by stalled peace processes or other factors, also in the OSCE region.

Undoubtedly, forced displacement, statelessness and complex migratory movements will remain prominent global issues requiring decisive and collaborative protection responses. The 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness to be celebrated in 2011, will provide opportunities to States and the international community to make renewed efforts to strengthen protection regimes and solve outstanding displacement issues including the protracted displacement situation in the Balkans and the Caucasus.

International human rights and refugee law, supported by existing OSCE's Human Dimension commitments on "Refugees, Displaced Persons, Returnees, and Stateless Persons", provide a binding framework for international protection. However, only too often there is a glaring gap between State obligations and commitments on the one hand and their implementation in practice on the other. All too often, humanitarian issues (including displacement) are also being instrumentalised for political trade-offs among parties - instead of focusing on a global human rights approach and on the needs of populations affected, when discussing displacement and solutions in a political environment. Sustainable and peaceful solutions to conflict *and* displacement however, as cumbersome as their achievement might be, are indispensable for enduring peace, stability and security in the region.

UNHCR  
September 2010