

## NOTE ON INTERNATIONAL PROTECTION

### I. INTRODUCTION

1. This year's Note on International Protection provides a summary of the main challenges faced and responses implemented by UNHCR, governments, and other partners to secure protection and solutions for refugees, internally displaced persons (IDPs), the stateless, and other persons of concern to the Office between May 2008 and May 2009. It is structured around six main themes: protecting persons of concern in emergencies; improving access to international protection; ensuring refugee protection within mixed migration movements; strengthening implementation of the 1951 Convention; preventing and responding to statelessness; and securing durable solutions for persons of concern.

2. The total number of refugees worldwide under UNHCR's responsibility at the beginning of 2009 is estimated to be 10.5 million<sup>1</sup>, a fall of almost one million compared with 2008. By contrast, the number of conflict-induced IDPs grew to an estimated 26 million, of whom 4.6 million were newly displaced in 2008.<sup>2</sup> Some 14.4 million IDPs benefited from the Office's protection and assistance activities. In countries with reliable data, at least 6.6 million individuals were known to be stateless; however the global figure may be twice as much.

### II. OVERVIEW

3. During the reporting period, continuing or new emergencies in Afghanistan, Iraq and Pakistan, and in various African countries including the Democratic Republic of the Congo, the Darfur region of Sudan and Somalia, caused massive displacement. Humanitarian space was reduced as a result of various factors, including the changing nature of armed conflict; greater reliance by States on sovereignty arguments; side effects of peacekeeping where there is no peace to keep; restrictions on access; and attacks on humanitarian staff. Access to asylum also became more difficult, including as a result of interception, detention and restrictive procedures.

4. Nevertheless, a majority of States continued to uphold their obligations. Millions of refugees were able to find asylum, at least temporarily, and eventually a durable solution. While progress was made in strengthening implementation of the 1951 Convention relating to the Status of

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<sup>1</sup> This number excludes some 4.7 million Palestinian refugees who fall under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA).

<sup>2</sup> See: *Internal Displacement at Record High*, Internal Displacement Monitoring Centre, May 2009

Refugees, restrictive interpretations and practices persisted. The Office made particular efforts to support practical initiatives to strengthen refugee protection in the context of mixed migratory flows, through the implementation of its “10-Point Plan” on refugee protection and mixed migration. Efforts to improve responses to the situation of refugees and IDPs in urban situations received increased attention. The focus of the 2008 High Commissioner’s Dialogue on protracted refugee situations gave impetus to more concerted efforts to find solutions to protracted situations. In 2008, almost 2 million refugees and IDPs returned home, while some 65,800 refugees benefited from resettlement opportunities made available by a growing group of resettlement countries.

5. Patterns of conflict became more complex, as did contemporary forms of displacement. It became increasingly evident, for instance, that displacement is likely to be further impacted by environmental factors, such as population growth, declining resources and inequality of access to them, ecological damage and climate change, and demographic and urbanization trends. Armed conflict, extreme deprivation, and climate change tended to reinforce each other and trigger further displacement.<sup>3</sup> The legal implications of displacement driven by forces other than persecution, human rights violations and war have yet to be seriously assessed. Varying root causes of displacement clearly create differing response needs and responsibilities. However, whatever responses may be necessary, the concept of asylum will have to be appropriately safeguarded. The international protection regime must be strengthened in areas where it is still weak and made flexible enough to respond to new displacement challenges.

### III. PROTECTING PERSONS OF CONCERN IN EMERGENCIES

6. The provision of protection including humanitarian assistance to refugees and IDPs in insecure environments became more difficult during the reporting period. Distinct but increasingly inter-related conflicts on several continents continued to have major implications for global peace and security. These conflicts were at the centre of many of today’s humanitarian disasters and caused significant displacement.

7. In Afghanistan, intensified conflict and the deliberate targeting of humanitarian workers limited humanitarian access to around half of the country’s territory. Some 2.7 million Afghans remained in exile in Pakistan and the Islamic Republic of Iran, deterred from return by violence and lack of access to land and livelihoods. In addition, by late May 2009, some 2 million people were displaced within Pakistan’s North-West Frontier Province and Federally Administered Tribal Areas, where access was very limited.

8. In Iraq, the security situation improved and largely violence-free provincial elections were held in January 2009. UNHCR supported the Government in working to create appropriate conditions for the voluntary return and sustainable reintegration of refugees and IDPs. For returns to occur in safety and dignity, however, considerable improvements are required with respect to security, property restitution (or property compensation for those unable to return to their places of origin), and full and equitable access to public services. The still fragile situation underlined the importance of preserving asylum for Iraqi refugees in the region and beyond. According to host government estimates, Jordan and the Syrian Arab Republic were hosting 1.6 million Iraqis, while

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<sup>3</sup> See: *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, UNHCR, October 2008.

2.6 million remained displaced within the country. Burden and responsibility sharing by the international community included the provision of material assistance for contiguous asylum countries and expanded resettlement opportunities for vulnerable Iraqis.

9. In Darfur, by early 2009, some 2.7 million people remained displaced internally, while nearly 250,000 refugees were hosted in 12 UNHCR-run camps in Chad alone. In March 2009, the enforced departure and/or the suspension of activities of 16 humanitarian and human rights non-governmental organizations (NGOs) from Sudan seriously reduced the international community's capacity to provide emergency assistance; threatened humanitarian initiatives; endangered lives of both IDPs and Chadian refugees; and raised the prospect of heightened tensions in camps and further displacement, affecting the region's stability.<sup>4</sup> The absence of a political agreement between the Government and the different rebel movements undermined the United Nations-African Union mission's ability to provide security to the affected populations.

10. In Somalia, where UNHCR coordinated protection and shelter activities for 1.3 million displaced people, the security situation remained highly volatile. Although 65,000 IDPs returned to Mogadishu in early 2009 when a new Government was established and Ethiopian troops withdrew, renewed fighting again displaced 43,000 in May. This prompted renewed displacement to neighbouring countries, particularly Djibouti, Ethiopia, Kenya, and Yemen, which together hosted over 430,000 Somali refugees at the end of 2008. Capacity in camps in north-eastern Kenya was seriously stretched. In *Somaliland* and *Puntland*, UNHCR could provide only very limited protection and assistance to 11,000 refugees and asylum-seekers, due to security and access constraints.

11. Of major concern was also the protection of the displaced in a number of long-running local conflicts, which were often removed from international media attention. In the Central African Republic, for example, some 120,000 refugees were forced to flee to Chad and Cameroon, while some 200,000 people were internally displaced in conditions of grave deprivation. Hostilities in the Democratic Republic of the Congo, particularly in the eastern provinces, aggravated the humanitarian situation there, provoking renewed displacement. The estimated 1.4 million IDPs in the country were often subject to armed attack, sexual and gender-based violence (SGBV), and recruitment, including of children, by armed groups. The Security Council considered the protection of civilians there as the priority of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).<sup>5</sup> An accord between the Governments of the Democratic Republic of the Congo and Rwanda on the disarmament of militia created opportunities for stabilization of the region.

12. After a visit to Sri Lanka in April 2009, the Representative of the Secretary-General on the Human Rights of IDPs called on the Liberation Tigers of Tamil Eelam to allow over 170,000 civilians to leave the "no-fire zone" area and on government forces to respect the no-fire zone, allow humanitarian agencies unhindered access, respect IDPs' freedom of movement, and maintain the civilian character of IDP sites. UNHCR and partners mounted a major humanitarian operation to assist IDPs and provide them with food, medical services and shelter. By late May 2009, fighting had come to an end and close to 280,000 IDPs had been registered.

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<sup>4</sup> S/2009/201, 14 April 2009, paras. 58–67

<sup>5</sup> SC resolution 1856 (2008)

13. In Colombia, an estimated 3 million Colombians remained internally displaced, with nearly 300,000 in a refugee-like situation in neighbouring countries. The authorities made positive strides to strengthen their protection, drawing on the country's well-developed legal framework for the protection of IDPs. Serious gaps in implementation nevertheless persisted, and in May 2008 the Constitutional Court ordered the establishment of 13 government programmes in order to protect IDP women, to prioritize their access to emergency humanitarian assistance, and to investigate several SGBV cases. In January 2009, the Court ordered urgent measures to protect indigenous groups.

14. In Georgia, out of some 130,000 people who fled the South Ossetia conflict in August 2008, 14,000 were still internally displaced at the beginning of 2009. Another 100,000 IDPs had been displaced for 15 years, many in very poor conditions. UNHCR therefore worked to build confidence; promote dignified and safe return for those who wished to do so; and support the integration of IDPs in adequate conditions at their existing location when no other solution was available.

15. Increasingly complex emergencies and armed conflicts exposed humanitarian personnel to highly dangerous environments. Deliberate targeting of humanitarian workers increased during the reporting period. Balancing the imperatives of staff safety and uninterrupted humanitarian action placed greater demands on operational planning. In 2008, more aid workers than peacekeepers died from malicious acts and 260 humanitarian aid workers were killed, kidnapped or seriously injured in violent attacks – the highest yearly toll on record. Some 60 per cent of these attacks took place in three countries alone: Afghanistan, Somalia and Sudan. In Pakistan, UNHCR driver Syed Hashim was killed in February 2009 during the abduction of the Head of the Quetta sub-office, who was held in captivity for two months before being released.

16. The protection of civilians is primarily a responsibility of States, although not all Governments respect this. As a humanitarian agency, UNHCR has limited capacity to provide physical security for persons of concern. In some situations, ensuring the security of camps and maintaining their civilian and humanitarian character was only possible with the support of peacekeepers, as for instance in eastern Chad, where their support is helping dissuade attacks on camps, limit recruitment of children, and reduce the threat of banditry and sexual violence. In the Darfur region of Sudan, violence (including SGBV) and insecurity in and around IDP and refugee camps increased during the reporting period, with weapons prevalent inside some camps. Disaffected youths become politicized and dissension with traditional leaders added to tensions in camps. The African Union–United Nations Hybrid Operation in Darfur provided valuable support to efforts to deal with these issues.

17. UNHCR continues to refine its involvement and further mainstream IDP issues within its structures, policies and programmes. By early 2009, the Office was engaged, along with partners from the United Nations system, the Red Cross movement and the NGO community, in 28 IDP operations across the globe in protecting and assisting an overall IDP population of some 14.4 million people.

18. In the Inter-Agency Standing Committee's protection cluster, which by 2009 was being implemented in 22 field operations with UNHCR leading or co-leading 15 of these, staffing support and technical expertise were provided, including through support missions to address protection issues. The cluster also supported the development of tools and systems for needs assessment and monitoring, for instance, in relation to SGBV and child protection. In November 2008, the first Learning Programme on Internal Displacement for UNHCR senior managers was launched, bringing together 25 managers in major IDP operations. In all three clusters led by UNHCR, numerous training sessions were organized.

19. At the regional level, a ministerial conference of the African Union (AU) in November 2008 endorsed the draft Convention on the Protection and Assistance of Internally Displaced Persons in Africa. UNHCR provided technical and other support during the drafting process. In addition, protocols to the 2004 Dar es Salaam Declaration on Peace, Security and Development in the Great Lakes region on protection and assistance to IDPs; property rights of returning populations; and preventing and countering sexual violence against women and children, came into force in June 2008. They require the 11 Member States of the International Conference on the Great Lakes Region to ensure their domestic implementation. The first protocol obliges Member States to incorporate the 1998 Guiding Principles on Internal Displacement into national law.

#### IV. IMPROVING ACCESS TO INTERNATIONAL PROTECTION

20. As reaffirmed by the Inter-American Commission on Human Rights in July 2008, the obligation of *non-refoulement*, which requires that States not return persons at risk of persecution to their home countries either directly or indirectly, is "a basic and well-recognized principle of international law". Forced returns of asylum-seekers and migrants without assessment of international protection needs, in particular of illegal arrivals, nevertheless occurred repeatedly in breach of the principle. UNHCR received credible accounts of hundreds of Eritreans being detained and deported, despite repeated appeals to the authorities concerned to refrain from forcible return. The Office was often denied access to detention centres to determine international protection needs despite States' obligations to extend cooperation under Article 35 of the 1951 Convention and other international norms. Refugees and asylum-seekers were often held for indefinite periods, in violation of applicable international standards and agreements. Sometimes people fleeing countries of origin (including Somalia) where a *prima facie* need for international protection was likely, were denied admission at the border. In South-east Asia, the Office expressed strong concern at reports in early 2009 that large groups of "boat people" were being intercepted and towed back out to sea, resulting in loss of life. In Central Asia, the forced return of longstanding Afghan refugees from Uzbekistan was of particular concern.

21. In order to improve protection against *refoulement*, the Office intervened frequently on behalf of asylum-seekers and refugees threatened with deportation to ensure the principle was upheld. It continued to work to enhance border and detention monitoring and trained border police and immigration officials and/or NGO partners officials in numerous countries on their *non-refoulement* obligations, as well as how to identify international protection needs and ensure access to territory for persons of concern.

22. Asylum was viewed through a security prism in many parts of the world, resulting in States reinforcing control measures beyond their own territory and at borders. All too often, interception took place without proper scrutiny. Protection safeguards at borders were less evident when it came to sea borders and were often absent in the context of the increasing number of “offshore” border controls, including visa requirements, interception practices, carrier sanctions, and outposted immigration officials. Extraterritorial migration controls continued to be outsourced to private actors without any protection safeguards in place.

23. UNHCR continued to work with States and relevant institutions to find practical solutions to these issues and translate protection concepts and objectives into concrete action in relation to protection-sensitive border and migration management. In Europe, for instance, cooperation agreements, including border monitoring, training and the establishment of joint working bodies, had by 2009 been concluded between UNHCR, national border guards and NGOs in most Central European countries, as well as with Frontex, the European border monitoring agency. In Angola, UNHCR and the International Organization for Migration (IOM) worked together to set up similar cooperation arrangements with the Angolan border police. In Ecuador, the Government adopted comprehensive approaches to protection challenges in border areas in 2008 with UNHCR support. These involved: enhanced and accelerated registration of Colombians by mobile brigades in the border areas, many of whom had never been registered as asylum-seekers; determination of refugee status; documentation; and identification of special protection needs. An expert roundtable in Geneva in November 2008 brought together 40 experts from different countries to clarify terminology; identify core functions of, and the main actors in, protection-sensitive entry systems; and share practical examples supporting the establishment of protection-sensitive entry systems.

24. Mindful of potential security considerations, UNHCR worked with authorities to find ways to ensure respect for the principle of *non-refoulement* while addressing legitimate concerns about international crime and terrorism that made States particularly wary about unauthorized arrivals. UNHCR collaborated closely with partners in the United Nations system to ensure efforts to counter terrorism did not undermine refugee protection and the right to seek asylum, and that persons in need of international protection were not wrongly excluded. The Office also strengthened its cooperation with the United Nations Counter Terrorism Committee and its Executive Directorate, assisting preparation of their country visits. Enhanced cooperation with Interpol sought to ensure that the rights of recognized refugees, including those travelling on Convention Travel Documents, but subject to Interpol “red notices” and arrest warrants, were respected and dealt with in a predictable and procedurally correct manner.

25. Detention remained a concern as regards its use, the absence of serious reasons to justify it and conditions of detention. Penal conditions, including handcuffs and shackles, were not uncommon. Parole possibilities were often limited, especially when persons of concern were not in a position to seek protection from the consulate of their country of origin. In some cases, impossible conditions for release condemned individuals to arbitrary deprivation of freedom beyond the expiry of their terms, without the possibility of legal challenge. Detention of children, as a deterrent and a response to irregular entry, remained quite prevalent in a number of countries. Sometimes children could not even apply for asylum due to immediate detention upon arrival or they suffered long delays before asylum claims were determined, leading to prolonged detention.

26. Improvements were nevertheless registered. In Australia, the Government announced in July 2008 that detention in immigration centres would only be used as a last resort and for the shortest possible time. In the United States, the Secretary of the Department of Homeland Security appointed a Special Advisor in January 2009 to review conditions in the Department's detention facilities and the feasibility of using less restrictive facilities and community-based alternatives to detention. In Canada, conditions were improved for detained asylum-seekers, including for those in provincial prisons. In Lebanon, the Office worked closely with the authorities and was able to significantly reduce the number of people of concern detained. In Sudan, access to almost all detained persons of concern was secured and virtually all were released by the end of 2008. In Jordan, the Government enacted new regulations instructing the release of asylum-seekers and refugees detained for violations of residency and labour laws, and facilitated UNHCR's access. In November 2008, UNHCR organized a two-day seminar in Geneva on improving protection for detained persons of concern, bringing together field office and headquarters staff and representatives from 10 partner agencies.

27. Registration remained a priority for accessing asylum procedures, protection and assistance, and ultimately for solutions. The Office raised concerns where Governments either followed discriminatory registration practices or stopped registering newly arriving asylum-seekers from certain countries of origin. Elsewhere the absence of, or deficiencies in, legal frameworks meant refugees were disadvantaged and denied access to basic rights such as residence permits or even in-country travel. As examples of responses to such challenges, in Togo, an initiative in late 2008 allowed the regularization of the situation of nearly 1,000 refugee children found to have been left out of an earlier census: as a result, they could participate in school examinations. In Côte d'Ivoire, registrations enabled thousands of children and adults to be documented. In eastern Sudan, a verification/registration exercise was completed in 12 camps, as part of the search for durable solutions to this protracted situation. In Zambia a similar exercise trained officials in using *proGres* registration software. In Afghanistan in December 2008, following the completion of the first National Profile which identified some 230,000 IDPs, a strategy was being developed to support solutions.

28. In many countries, refugee documents lacked the desired attributes and consequently failed to shield refugees from abuse or extortion. Some States and UNHCR also expressed concern that Convention Travel Documents (CTDs) for both refugees and stateless persons did not meet contemporary standards. CTD features needed to be upgraded to ensure refugees and stateless persons were not hampered in their movements. In other situations, improved identification documents or extension of their validity helped reduce asylum-seekers' and refugees' exposure to harassment and arrest. In Ethiopia, for instance, a memorandum signed with the Government in April 2008 resulted in attestations being issued to all newly arriving refugees. In Pakistan, a memorandum was signed in March 2009 indicating the intent to extend the stay of Afghan refugees in Pakistan by three more years until December 2012. UNHCR also established a Working Group on Personal Refugee Data to strengthen the organization's data protection policy framework.

## V. ENSURING REFUGEE PROTECTION WITHIN MIXED MIGRATION MOVEMENTS

29. During the reporting period UNHCR took initiatives in collaboration with governments and international, regional and national partners in several regions to highlight the refugee protection dimension of mixed migratory movements. These included not only questions related to access, but also broader issues. Three years after the issue of the 10-Point Plan on refugee protection and mixed migration, a tool with practical suggestions for the development of protection-sensitive migration strategies, the Plan enjoyed broad recognition in a growing number of regions. The Office has consistently used the Plan as a strategic tool for advocacy, government liaison and working with partners. Its comprehensive approach, which sought to present refugee protection as a manageable task, has helped develop or improve the legislative and institutional framework on refugee and asylum matters in countries facing mixed migratory movements.

30. The collaborative approach underpinning the Plan proved essential to reinforcing existing and building new partnerships. One of UNHCR's most important international partner agencies on the operational level is IOM. In a senior management retreat in February 2009, the heads of both agencies underlined their commitment to further strengthening cooperation; identifying the core areas and responsibilities of each organization; and avoiding duplication. At the field level, UNHCR and IOM were involved, often with other partners, in developing various joint projects and models in the area of refugee protection and international migration.

31. Initiatives to strengthen responses in different regions of the world included the November 2008 regional conference on refugee protection and international migration in West Africa which UNHCR convened jointly with IOM, the Economic Community of West African States (ECOWAS), and the Office of the High Commissioner for Human Rights (OHCHR) in Dakar, Senegal. Three strategic protection objectives emphasized at the conference were (i) implementing the ECOWAS free movement protocols, including to promote the local integration of residual refugee populations from West Africa; (ii) enhancing government capacities to identify and protect refugees in mixed flows through fair and efficient asylum procedures; and (iii) improving regional responses to human trafficking.

32. In the Caribbean, where mixed migration occurred along complex maritime and air routes, the political climate was dominated by concerns over national security and migration control, often to the detriment of those in need of international protection. Apart from building the capacity of immigration departments and national human rights ombudsman's offices regarding the rights of asylum-seekers, UNHCR continued to foster the network of Honorary Liaison Officers which enhanced the Office's capacity to monitor detention centres and entry points there.

33. In South-east Asia, UNHCR promoted a strengthened focus on the human dimension of mixed migratory movements, including through the Bali Process, to ensure protection considerations were duly factored into discussions on irregular movements. The Gulf of Aden remained another focus region, as an ever increasing number of people (over 50,000 in 2008) made the perilous voyage across the Gulf. Many came from Somalia and Ethiopia and were refugees fleeing



persecution and civil war. New protection concerns in this region related to increased piracy. Sometimes migrants and refugees in boats were used as “human shields”, putting innocent people’s lives at risk.

34. In southern Europe, some countries reacted to mixed movements and increased numbers of maritime arrivals with strict deterrence measures, including with “push backs” and refusals to disembark people rescued at sea. Systematic detention, rather than the development of long-term solutions taking into account the rights and needs of asylum-seekers, repeatedly gave rise to concerns, for example, in Malta and Greece. UNHCR continued to work with States to address the need to provide adequate reception conditions and access to procedures for people seeking protection. It also called for strengthened responsibility-sharing arrangements, especially among Member States of the European Union (EU), to assist such countries, while underlining that these challenges do not absolve States from fulfilling their international protection obligations.

35. UNHCR commissioned a study to examine identification and referral systems for victims of human trafficking in a number of countries. Shortcomings in many of these countries’ systems included: the absence of a well structured legal framework for identifying victims of trafficking and assessing their international protection needs; lack of adequate inter-agency expertise, coordination and cross-agency collaboration and information exchange; and failure to acknowledge international protection needs of victims of trafficking. An internal evaluation showed some gaps in UNHCR’s own response to human trafficking, including: the relatively limited resources the Office has invested in this issue; the lack of a consistent approach to implementing the Office’s policy; and varying levels of expertise on human trafficking and its linkages to UNHCR’s work. More positively, in October 2008, Costa Rica favourably adjudicated the first known refugee claim from a victim of trafficking in the country, based on her trafficking experience. IOM and UNHCR continued to work jointly to improve inter-agency cooperation on human trafficking by developing joint standard operating procedures to identify and protect victims of trafficking and joint training of staff.

## VI. STRENGTHENING IMPLEMENTATION OF THE 1951 REFUGEE CONVENTION

36. As of mid-2009, 147 States were party to the 1951 Convention and/or 1967 Protocol. In some parts of the world, notably Asia, the Middle East, and North Africa, accessions remained weak. Despite strongly established traditions of hospitality and asylum in these regions, there is reluctance to establish more formal legal frameworks. A number of countries continued to rely on UNHCR as the protection provider, and the Office often worked with civil society to bolster advocacy efforts for signature and ratification of both instruments. In the broader human rights context, the Office welcomed the United Kingdom’s lifting in November 2008 of its reservation to the 1989 Convention on the Rights of the Child, which previously had effectively excluded asylum-seeking children in the country from its provisions.

37. Implementation of the 1951 Convention at the national level was inadequate in several countries, especially where States took only limited steps to develop domestic asylum systems. In some African and former Soviet countries, a particular concern was the lack of integration of asylum laws and structures into the mainstream of the national legal system, with refugee laws operating in

isolation from immigration, administrative and constitutional frameworks. In Central Asia, there was a notable deterioration in the protection environment. Although status determination mechanisms and procedures existed in all these countries, except Uzbekistan, political sensitivities obstructed access by asylum-seekers from neighbouring countries.

38. Examples of good State practice include: refugee legislation passed in Nicaragua in June 2008 which applies a broad refugee definition, including that contained in the 1984 Cartagena Declaration on Refugees; establishes a National Commission for Refugees; provides for legal counsel for asylum-seekers; and recognizes asylum-seekers' right to work. In the Republic of Korea, legislative changes from mid-2009 also granted asylum-seekers the right to work. In Liberia, the Refugee Eligibility and Appeals Commission was re-instituted with UNHCR's support and, following training, assumed responsibility for refugee status determination. In Burundi, an asylum office was established in 2009 after asylum legislation was passed for the first time in 2008. While UNHCR welcomed the European Union's "Pact on Immigration and Asylum", adopted under the French Presidency in October 2008 and the European Commission's Policy Plan on Asylum, the Office continues to be concerned about divergent practices and lack of harmonization.

39. Concerns persisted regarding restrictive interpretations of the refugee definition, including in particular interpretations effectively preventing the Convention's application to an entire group on the basis of nationality, contrary to the non-discrimination approach of the Convention. Among sometimes widely divergent recognition rates for the same or comparable caseloads, individuals from Iraq, Somalia and Sri Lanka had very different prospects of finding protection depending upon the country (or even the part of the country) in which their claim was lodged. Differences resulted both from differing interpretative approaches and from problems of quality in assessing and adjudicating claims and evidence.

40. UNHCR therefore worked to support sustainable "quality initiatives" in various countries, practical cooperation and harmonization among States, and where necessary, amendments to existing legislation. In addition it provided comments to draft asylum legislation, *inter alia*, in Angola, Chad, Denmark, Ireland, the Netherlands, Spain, Switzerland, Ukraine, and the United Kingdom. The Office also issued Guidance Notes on asylum claims relating to sexual orientation and gender identity and on claims raising the issue of female genital mutilation (FGM), as well as guidelines regarding eligibility for refugee status for asylum-seekers from Eritrea, Iraq and Sri Lanka. With regard to FGM-related asylum claims, the Office welcomed a trend in some countries, such as Sweden, recognizing refugee status rather than granting subsidiary forms of protection. *Amicus curiae* interventions were made in several countries on issues including *non-refoulement*, exceptions to Article 33(2) of the 1951 Convention, exclusion, and cessation. The Office made interventions before the European Court of Justice to assist its interpretation of the EU "Qualification Directive", in particular in relation to cessation, exclusion, and the interpretation of Article 1D of the Convention. Cooperation with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was enhanced, notably regarding the interpretation and application of Article 1D and UNRWA's mandate.

41. UNHCR continued to conduct refugee status determination (RSD) under its mandate in countries where governments were not, or were only partially, engaged in RSD. Between 2003 and 2008, globally States received 5 per cent fewer asylum applications, while UNHCR received 32 per

cent more. In 2008, 82,000 people applied for mandate refugee status, while many thousands more underwent *prima facie* status determination interviews with UNHCR. In 2008, 31 RSD experts were deployed to 14 mandate operations under the UNHCR RSD Project to support case processing, development and strengthening of procedures, and training of UNHCR, NGO and government staff. Partnerships with governments with recognized RSD expertise to build the capacity of mandate operations and national authorities were extended. RSD Learning Programme workshops were held in Egypt, the Syrian Arab Republic and Turkey, and one on exclusion in Kenya. Headquarters support efforts, including ensuring implementation of the RSD Procedural Standards, were complemented by Regional Global RSD Officers in Kenya, Lebanon and Malaysia, who undertook numerous support missions to field offices. An online Community of Practice was launched, allowing staff worldwide to discuss RSD issues in an open forum, thereby helping enhance the quality, consistency and harmonization of UNHCR's RSD procedures and decision-making. UNHCR's Refworld decision support website (<http://www.refworld.org>) counted among its users an increasing number of UNHCR staff, government officials, judges, lawyers, academics and NGO practitioners. In 2009, UNHCR agreed to partner with the Netherlands Immigration and Nationality Directorate (IND) in the area of information exchange, with the IND agreeing to use Refworld in place of their internal data collection and management efforts, thereby saving resources.

42. In many countries, conditions of asylum remained a matter of concern. Meeting basic needs was often equally problematic for host communities. Too many refugees still did not enjoy the rights which international refugee law and its national equivalents formally guarantee. In this respect, UNHCR's "global needs assessment" initiative helped enhance understanding of protection gaps. Community-based approaches to the process and multi-functional teams helped ensure needs were appropriately prioritized.

43. Among the High Commissioner's special projects in Asia were initiatives in Bangladesh, India, Nepal and Thailand to improve the health and nutritional status of refugees; women's security in camps and urban environments; access to water; and the prevention of anaemia in Bangladesh, Nepal, Pakistan, Sri Lanka and Thailand. In Africa, monitoring the implementation of special projects showed that the establishment of therapeutic feeding centres and strengthened public health facilities in Cameroon had contributed to significantly reduced malnutrition rates for some 60,000 refugees and host communities in eastern Cameroon. In Kenya, malnutrition and neonatal mortality rates were radically reduced. The Office also worked with the Roll-Back Malaria Partnership, allocating significant additional resources in 2007 and 2008 to 15 countries to intensify malaria control efforts, including thousands of life-saving nets for refugee populations in Africa, especially pregnant women and infants who were at greatest risk. UNHCR undertook various activities to support HIV prevention, care and treatment activities. These focused on ensuring people of concern benefited from the fullest possible range of care and services, including access to national anti-retroviral treatment programmes and support for people living with HIV and their families. By 2009, 16 African countries had included refugees in their national programmes on HIV and AIDS.

44. There was a growing focus on the situation and rights of refugees, IDPs and others of concern in urban situations. Securing respect for their civil and socio-economic rights remained a challenge for States, UNHCR and civil society. Given the economic difficulties faced by many countries of asylum and the inability of governments to respond adequately to poverty and deprivation, new solutions based on responsibility and burden sharing and appropriate self-

sufficiency initiatives were sought. UNHCR, the European Union and a number of European countries cooperated in the identification of obstacles to the integration of refugees in States lacking the material conditions for refugees to become self-sufficient. By 2009, for instance, protection and assistance programmes in countries neighbouring Iraq, which hosted some of the largest urban refugee populations, encompassed many activities, including food, cash grants, non-food items, health care, education, interventions to prevent and respond to SGBV, and legal and social counselling. Strategies in Jordan and the Syrian Arab Republic focused on advocacy to promote access to public services, decentralization of services by building on community structures, outreach, and using new technology such as text messaging to share information.

45. In Latin America, the 2004 Mexico Plan of Action's "Cities of Solidarity" pillar helped facilitate implementation of refugee-friendly public policies in urban areas. While there were examples of successful programmes to foster employment and sources of income, notably through the establishment of micro-credit systems for refugees, expressions of goodwill by local authorities needed to be transformed into tangible activities. In Nairobi, Kenya, UNHCR and community-based partners used participatory assessments to reach refugees, including refugee women who were domestic workers, who rarely came to the Office. When assessments revealed these women lacked basic information about their rights and available services, the Office cooperated with a local NGO specialized in training domestic workers to provide training in cooking, cleaning and child care, along with literacy classes and rights awareness, to help empower them with skills and information and thereby enhance their protection.

46. As acknowledged at the Durban Review Conference in Geneva in April 2009, xenophobic attitudes and negative stereotyping of non-citizens persist on the part of politicians, law enforcement and immigration officials and in the media. This has led to xenophobic violence, killings and the targeting of migrants, refugees and asylum-seekers. At the same time, the conference outcome document urged States to work to combat such attitudes and activities, *inter alia*, at border entry areas, in the media, and in responses and policies towards refugees, IDPs and stateless persons. In South Africa, where violent attacks on foreign communities had forced asylum-seekers and refugees to flee their homes in 2008, UNHCR participated in a two-year strategy to promote peaceful coexistence between South Africans and foreigners. In Italy, the Office was among 27 organizations supporting a national campaign against racism and xenophobia launched in March 2009, entitled "Don't Be Afraid, Be Open to Others, Be Open to Rights".

47. UNHCR continued its efforts to integrate human rights into all areas of work, including by promoting the integration of people of concern and relevant humanitarian issues into the evolving legal human rights framework; intensifying cooperation with human rights mechanisms; and capacitating staff to effectively use human rights standards as the basis for planning, policy, guidance and advocacy. The Office leveraged human rights mechanisms to strengthen refugees' and IDPs' equal access to rights. UNHCR monitored UN special thematic procedures as well as mission reports, which in turn were used by protection staff to underpin protection strategy and démarches. In regard to the treaty monitoring bodies, UNHCR welcomed the fact that many States implemented the recommendation in Executive Committee Conclusion No. 95 (LIV) by addressing the situation of the forcibly displaced in their periodic reports. Treaty bodies systematically reflected on the extent to which forcibly displaced or stateless people enjoyed their rights. Several activities were developed around the 60th anniversary of the Universal Declaration of Human

Rights, including UNHCR's annual NGO consultations, a special issue of the *Refugee Survey Quarterly*, and the 16 Days of Activism against Gender-Based Violence in November 2008 focused on "Human Rights for Women and Human Rights for All".

## VII. PREVENTING AND RESPONDING TO STATELESSNESS

48. Statelessness remained a major problem with an estimated 12 million stateless people worldwide, of whom 6.6 million are known to the Office. Despite various efforts and increased attention, as outlined below, key challenges remained the "invisibility" of the stateless and generally poor understanding of their protection needs.

49. Efforts were made in several countries to identify and register stateless persons. In Kyrgyzstan, for instance, UNHCR supported a survey undertaken by NGO partners to identify stateless persons in the north of the country. As a result, in addition to the previously known population of almost 10,000 stateless persons, a further 10,000 stateless were identified and registered. It is expected that identification and registration will help facilitate acquisition of nationality, as was achieved for 558 stateless persons there in 2008. The identification project continued in southern regions of the country. At the end of 2008, the United Arab Emirates undertook a major information and registration campaign of the stateless *Bidoon* population and began processing applications for nationality.

50. In other countries, UNHCR-funded legal clinics enabled thousands of individuals to prove their nationality or to acquire one and to obtain identity documents. Such efforts were particularly important in countries where statelessness arose or was perpetuated because information relating to acquisition of nationality was difficult to obtain, the requirements in terms of documentary evidence were too complex, or the process was too costly for the stateless person in question. Long-standing projects providing such support existed in a number of States dealing with the protracted statelessness resulting from State succession, as in Ukraine and the Russian Federation. More recent programmes in Iraq and Nepal sought to ensure that favourable provisions in newly adopted nationality legislation led to reduced statelessness in practice.

51. Similar large-scale projects in Bosnia and Herzegovina, Montenegro, Serbia and The former Yugoslav Republic of Macedonia, provided information *inter alia* on birth and civil registration and documentation to large numbers of people. This was particularly important for the Roma community and IDPs, who were especially likely to face problems related to their nationality. In Serbia, legal aid was complemented by UNHCR support for the computerization of civil registry records. In another positive development, Bihari/Urdu-speakers in Bangladesh were able to obtain national identity cards and vote in national elections in December 2008. This solidified the major breakthrough reported in previous years regarding a protracted situation affecting an estimated 250,000 to 300,000 people.

52. Several States enacted legislative reforms that should serve to prevent and reduce statelessness. Australia introduced amendments to bring its nationality legislation into line with the 1961 Convention on the Reduction of Statelessness. Viet Nam introduced a revised nationality law

which amongst other reforms allows the naturalization of long-term stateless residents. Georgia and The former Yugoslav Republic of Macedonia likewise adopted legislation to facilitate naturalization of stateless persons.

53. Despite these positive developments, the frequent invisibility of stateless populations made it difficult to gauge overall progress. Moreover, new cases of statelessness continued to arise and existing situations were perpetuated because many States failed to address causes of statelessness, including poorly drafted or discriminatory legislative provisions. Two accessions to the United Nations Conventions relating to statelessness were recorded during the reporting period: Austria became the 63<sup>rd</sup> State party to the 1954 Convention, while Finland became the 35<sup>th</sup> State party to the 1961 Convention.

#### VIII. SECURING DURABLE SOLUTIONS FOR PERSONS OF CONCERN

54. Too many refugees remained without viable durable solutions for too long. The 2002 Agenda for Protection's call for coherence by integrating voluntary repatriation, local integration and resettlement into one comprehensive durable solutions approach remained valid. Resolute and sustained international cooperation and support were key, and during the reporting period, UNHCR worked to strengthen international commitment, particularly for initiatives to resolve protracted refugee situations. In 2008, the High Commissioner launched a new initiative to reinvigorate possibilities for solutions to protracted refugee situations and, in the interim, improve the quality of life for populations who have lived in exile for long periods.<sup>6</sup> The situation of the estimated 5.7 million refugees who had been living in exile for more than five years was of particular concern, because of the serious, detrimental effects of long-term displacement on the refugees themselves and on host governments and communities. Five situations were prioritized: Afghan refugees in the Islamic Republic of Iran and Pakistan; Rohingya refugees in Bangladesh; Bosnian and Croatian refugees in Serbia; Burundian refugees in the United Republic of Tanzania; and Eritrean refugees in eastern Sudan. The 2008 High Commissioner's Dialogue on Protection Challenges, dedicated to protracted refugee situations, concluded that: each situation requires its own tailor-made solution, of which political will is generally the most essential and illusive ingredient; an honest and balanced assessment must facilitate a common understanding of what international solidarity and burden sharing entails, and then be vigorously adhered to; and durable solutions need to be looked at in a comprehensive manner and pursued in a complementary way.

55. The search for comprehensive solutions to protracted refugee situations continued to yield results. More than 16,000 refugees from Myanmar left Thailand and over 13,000 Bhutanese left Nepal in 2008 in major resettlement efforts. In the United Republic of Tanzania, the Government continued to implement a programme of local integration for some 176,000 Burundian refugees who fled their country in 1972, while voluntary repatriation support was available for those opting to return. Those Burundian refugees who arrived in Tanzania more recently also repatriated in significant numbers, as did refugees from Southern Sudan living in Kenya, Uganda and other neighbouring States. In Sierra Leone, a comprehensive approach was adopted. With evidence of a return to regional peace and stability, UNHCR put significant efforts into seeking solutions for refugees, both before and after its June 2008 recommendation that cessation for Sierra Leonean

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<sup>6</sup> EC/59/SC/CRP.13, 2 June 2008.

refugees be invoked from 31 December 2008. Cash and transport assistance was made available to Sierra Leonean refugees wishing to repatriate. Larger-scale resettlement ceased but remained an option for those few with specific needs. UNHCR launched a local integration initiative in the country, providing integration support on a community level and also through national development plans, allowing refugees to enjoy a legal residence status under the ECOWAS protocols on free movement.

56. Self-reliance is not a durable solution in itself, but provides the basis for achieving refugees' civil, political, social, economic and cultural rights, and is a precondition to finding a dignified durable solution. This goal is increasingly being pursued through collaborative projects with development actors. Positive examples included a United Nations joint programme in Bangladesh, a refugee-affected and hosting areas initiative in Pakistan, and self-reliance projects in Papua New Guinea to enhance refugees' economic integration within host communities. In Yemen, UNHCR, in partnership with the International Labour Organization and the European Commission, launched a comprehensive livelihoods assessment study intended to inform the development and implementation of self-reliance activities benefiting refugees in camps, settlements and urban areas.

57. Return to Afghanistan represented UNHCR's largest voluntary repatriation programme, with some 278,000 registered refugees returning with UNHCR assistance. While 2008 saw a higher than anticipated repatriation rate, UNHCR was concerned that these movements were prompted by growing insecurity and declining living standards for refugees in host countries – especially in urban areas – rather than meaningful improvement in conditions in the country of origin. UNHCR dedicated much of its efforts to supporting the reintegration of returnees. A stark indication of the challenges this entails was that roughly 10 per cent of repatriating Afghans were further displaced, while others fled the country once more. The November 2008 Kabul international conference on return and reintegration was a milestone in prioritizing areas of return and reintegration in development plans and situating them prominently in the Afghan National Development Strategy.

58. Other notable repatriation movements during 2008 included that of some 95,000 Burundian refugees mostly from the United Republic of Tanzania, including more than 30,000 from old settlements established after the 1972 influx; nearly 11,000 Liberian refugees mainly from Ghana; 54,000 returnees to the Democratic Republic of the Congo; 64,500 assisted repatriations to Southern Sudan from Ethiopia, Kenya and Uganda; and 7,000 Mauritanian refugees who repatriated with UNHCR's assistance.

59. While UNHCR could not encourage returns to Iraq at this stage, it put in place a mechanism through which returnees could seek assistance. Support included cash grants, non-food items, shelter rehabilitation, emergency shelter kits, water/sanitation and education projects and legal aid. In 2008, the total number of returns amounted to 25,600 refugees and 196,000 IDPs. UNHCR relocated several of its staff from Jordan to Iraq to support this process.

60. The scale of return and the success of return and reintegration are two of the most tangible indicators of progress in any peacebuilding process. Particular obstacles to return in these situations remained land and property disputes, lack of mechanisms to address them, and lack of follow-up on the reintegration of ex-combatants. Adequately addressing these issues required close collaboration within the United Nations, such as that experienced between UNHCR and the Peacebuilding

Commission in Burundi. The Security Council remained sensitive to the crucial correlation between peacebuilding and return from displacement, as evidenced by the reference in Security Council Resolution 1830 (August 2008) to the need to create conditions conducive to the voluntary, safe, dignified, and sustainable return of refugees and IDPs in Iraq. The involvement of refugees and IDPs in peace processes also provided critical perspectives on the causes of conflict, and contributed to a sense of shared ownership in peacemaking and peacebuilding. UNHCR welcomed Security Council Resolution 1820 (2008) aimed at strengthening responses to SGBV committed in conflict and increasing women's participation in peace talks. In this context, UNHCR participated for instance in a working group on transitional justice in northern Uganda to facilitate more effective reparations for survivors of SGBV.

61. The United Nations Delivering as One initiative, primarily focused on development activities, aims to secure greater integration and coherence in the United Nations' work and provides another forum for seeking to bridge the "relief to development gap". This strategic framework in support of comprehensive social and economic development is well suited to supporting the process of local integration in the country of asylum or reintegration in the country of origin by persons of concern. UNHCR was closely involved in the initiative in five of the eight pilot countries, i.e., in Albania, Mozambique, Pakistan, Rwanda and the United Republic of Tanzania.

62. UNHCR continued to pay particular attention to possibilities for local integration. In Africa, the Tanzania Comprehensive Solutions Strategy included the processing of naturalization applications submitted by some 158,200 Burundian refugees from the 1972 influx. Other opportunities emerged for Congolese refugees from the Democratic Republic of the Congo in Angola, Congolese from the Republic of Congo in Gabon, Ghanaians in Togo, Nigerians in Cameroon, Togolese in Ghana, and Rwandans in several countries. In Europe, UNHCR worked to reduce obstacles to integration as identified by a recent European Commission-supported study on local integration of refugees in Ukraine, Belarus and the Republic of Moldova. The Government of The former Yugoslav Republic of Macedonia adopted a strategy for 2009-2015 for the integration of refugees and aliens. In Asia, the naturalization of around 3,000 former Cambodian refugees in Viet Nam made progress. In Latin America the "Cities of Solidarity" and "Borders of Solidarity" programmes of the Mexico Plan of Action aimed to facilitate self-sufficiency and local integration. They particularly benefited Colombian refugees in Ecuador, Panama and the Bolivarian Republic of Venezuela, as well as urban refugees in Costa Rica, Argentina, and Brazil.

63. Enhanced resettlement efforts continued in 2008 as a protection tool, as part of a comprehensive durable solutions strategy, and as a means of burden and responsibility sharing. More than 121,000 resettlement submissions and 65,800 departures in 2008 represented a 22 per cent and 32 per cent increase respectively compared to 2007. Submissions of women-at-risk for resettlement increased by 42 per cent. A new Resettlement Learning Programme contributed to consistency in quality and predictability of submissions. UNHCR established an Expert Group on Anti-Fraud and developed anti-fraud policy and procedural guidelines.

64. Most UNHCR resettlement submissions and departures were from Asia, especially from Thailand, Nepal and Malaysia. A comprehensive protection and durable solutions approach allowed resettlement to create and maintain protection space, particularly in countries including China, India, Indonesia and the Islamic Republic of Iran. UNHCR increased its resettlement processing capacity



in Africa, as evidenced by a 30 per cent increase in submissions from the continent. The Mexico Plan of Action's "Solidarity Resettlement" Programme allowed over 100 Colombian refugees to settle in Argentina, Brazil, Chile, Paraguay and Uruguay in 2008. Some 215 Palestinians were resettled to Brazil and Chile. Resettlement needs among Iraqi refugees remained high. In 2008, over 33,500 Iraqis were referred for resettlement, some 25,000 of them to the United States. UNHCR also continued its efforts to seek durable solutions for Palestinian refugees from Iraq. The relocation of some 1,400 Palestinians residing in Al Waleed to a new site was successfully completed in November 2008.

65. The Office continued to appeal for increased resettlement places – in particular for dossier referrals, emergency and medical cases – and advocated that more States establish resettlement programmes. The Office welcomed Japan's pilot resettlement project involving 90 Myanmar refugees in Thailand, as well as efforts to establish an EU resettlement scheme. Unfortunately, the worldwide economic crisis prompted some resettlement countries to suspend or scale-back their resettlement programmes.

66. The Emergency Transit Centre in Timisoara, Romania, became operational following a tripartite agreement signed between UNHCR, IOM and the Romanian Government in May 2008. The Centre can accommodate up to 200 refugees facing immediate protection risks in the first country of asylum, pending resettlement processing. Similar arrangements were planned in the Philippines and Burkina Faso.

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