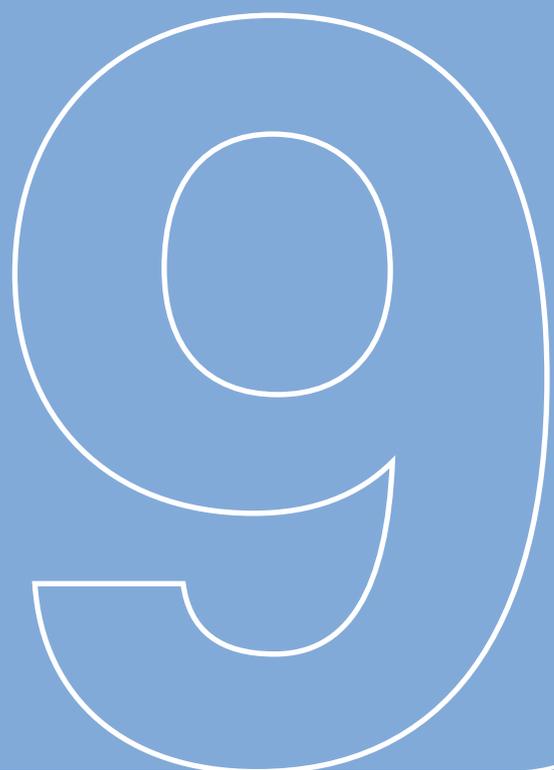




Return arrangements for non-refugees and alternative migration options



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A functioning migration management system provides solutions for “non-refugees”. This group includes persons found not to be in need of international protection and without compelling humanitarian reasons to stay (“unsuccessful asylum-seekers”) as well as persons who never sought asylum. Amongst other things, effective return policies and practices for non-refugees are essential for maintaining credible asylum systems. Demonstrating that unauthorized entry is not a back-door to regular migration can deter irregular migration, and reduce incentives for smuggling and trafficking.

The 10-Point Plan suggests two options for non-refugees: return to the country of origin; or access to alternative legal migration options, that is, regularization or legal onward migration to another country. As the latter option will generally only be available for people with a specific profile or in specific circumstances, this Chapter focuses on return. However, it also provides some practical examples of alternative migration options.

Sustainability of return is best guaranteed if people who have no right to stay return voluntarily. Voluntary return ensures that the return takes place in a safe and dignified manner; and it is also cost effective for the returning State. Several countries have developed good practices to encourage and support voluntary and sustainable return; while others have established initiatives to ensure that the specific needs of vulnerable groups, such as separated minors, are addressed during the return process.

The International Organization of Migration (IOM) is a particularly important actor with regard to the voluntary return of non-refugees. IOM has assisted many governments in establishing specific return programmes and has helped a large number of non-refugees to return home.

While separate considerations are necessary when repatriating refugees (see Chapter VII) or returning refugees and asylum-seekers to a first country of asylum (see Chapter VIII), some general aspects of return management apply to all return movements. The proposals made in this Chapter may therefore also be relevant for these issues.

1

Return

1.1 *Respecting the principle of non-refoulement in the return process and ensuring return in safety and with dignity*

People must not be forced to return to situations where their human rights are at risk. It is principally the asylum procedure that ensures that the return process complies with the principle of *non-refoulement*. However, some individuals in the return procedure may not have been channelled through an asylum procedure. Even if they have, new risks may have arisen, *sur place*, in the meantime. It is important that these new risks are assessed, either through referral to the asylum procedure or a separate procedure, as in the first example below. Concerns that some returnees might abuse such a process can be addressed through establishing proper mechanisms within the asylum procedure (see Chapter VI).

Returnees' rights and human dignity may also be at risk during the return process, particularly in the event of forced returns. Specific guidelines and training for law enforcement officials can provide the responsible officials with the necessary framework and appropriate tools to handle challenging situations in a way that respects the rights and dignity of the returnees.

PRE-REMOVAL RISK ASSESSMENT (PRRA) CANADA, 2001

A *Background and Rationale*

In Canada, persons subject to a removal order may apply for a pre-removal risk assessment. A removal order may be issued following a negative refugee decision, but also following the discovery of an undocumented migrant or the stripping of permanent residence.

B *Actor*

Citizenship and Immigration Canada (CIC)

C *Actions*

- All persons subject to a removal order, including unsuccessful asylum-seekers who fear persecution upon return, may apply to the CIC for a PRRA;
- The risks that will be assessed during the PRRA are: the risk of persecution as defined in the 1951 Convention, the risk of torture and the risk to life or the risk to be subjected to cruel and unusual treatment or punishment. Rejected asylum-seekers who apply for a PRRA may only present new evidence that has arisen since their refugee hearing to support their claim for asylum;
- First-time PRRA applicants are not removed before a risk assessment is completed. Repeat PRRA applicants may be removed prior to a determination but are entitled to a visa to return to Canada if the application is awarded a positive determination;
- If the CIC considers that the applicant is at risk, he/she is entitled to "protected person" status and, in most circumstances, may eventually apply for permanent residence. Where an individual is excludable under Article 1(F) of the Refugee Convention, or for reasons of security or serious criminality, a positive decision results in a stay of removal;
- If the immigration officer does not find the individual to be at risk, he/she is subject to removal. In such instances the individual can apply to the Federal Court for judicial review.

D *Review*

The PRRA, which is assessed by a different government entity than the one responsible for the return process, is an important procedural safeguard in the return procedure that ensures that the return process does not result in serious human rights violations. The acceptance rate is, however, very low (below 5%). Furthermore, the PRRA has been used as an argument against the need to establish proper appeal procedures.

E *Further information*

More information on the PRRA is available at: www.cic.gc.ca.

Note: Similar risk assessments are undertaken on a case-by-case basis, in a less formal manner, in many European countries.

PROTECTION OF REFUGEES AGAINST DEPORTATION AND *REFOULEMENT*, ALGERIA, 2008

A *Background and Rationale*

The Government of Algeria has not yet established a fully functioning asylum procedure; UNHCR undertakes refugee status determination under its mandate. However, UNHCR's refugee certificates are often disregarded by police; and their holders are considered as illegal migrants and subject to arrest and deportation. UNHCR has developed a project to protect detained refugees from deportation and *refoulement*.

B *Actors*

- Private lawyers
- UNHCR

C *Actions*

The project has three strands:

- Establishing a hotline (24 hours a day, seven days a week) through which protection staff can be contacted in case of arrest, imminent deportation and other urgent protection matters. The hotline number is communicated to all persons of concern upon registration interview with UNHCR. Brochures, including information about the hotline, have also been disseminated widely among people of concern;
- Recruiting and training lawyers who intervene with judges on the behalf of UNHCR to stop deportation. To date, the office has signed agreements with three lawyers in the capital and in the eastern part of Algeria;
- Contacting judges (lawyer's interventions) and police officers (UNHCR's direct intervention) in order to inform them about the status of persons who are placed under UNHCR's mandate, and to explain the core principles of international protection.

D *Review*

An increasing number of persons of concern, detained by police or awaiting courts' decisions, are released following interventions by UNHCR and its lawyers. Police officers and judges contact directly UNHCR more and more often to confirm the identity and status of persons of concern.

Those activities have helped UNHCR to become aware of most, if not all, arrests and detention. Accordingly, the Office has been able to react in a timely manner and follow-up with the authorities.

This project includes elements of capacity-building and promotion of refugee law. The Office has reached out to a large number of police officers and judges and raised their awareness about refugee and asylum law, and about Algeria's international obligations in that regard.

This project has also strengthened the protection of people of concern in Algeria, as instances of detention and deportation on the ground of illegal migration are decreasing.

The lack of human resources in the UNHCR office in Algiers and the lack of funding to develop a lawyers' network throughout Algeria are key challenges. Arrests take place regularly in various parts of the country; some situations require field missions, while the security situation in some areas prohibits free movement of staff.

TRAINING OF NATIONAL POLICE FOR RETURN OPERATIONS IN DENMARK AND EU MEMBER STATES 2008 - 2009

A *Background and Rationale*

The Danish Refugee Council, together with government and NGO partners, has developed a training project that seeks to improve understanding among European authorities about best practices in return operations; international guidelines and standards; communication and trust between authorities and returnees; and coordination between authorities in host countries and actors in countries of return. The project also aims to develop procedures and standards that are both efficient and inclusive of national and international rights.

B *Actors*

- Danish National Police
- Danish Refugee Council (DRC)
- Dutch Council for Refugees
- ECRE
- FRONTEX
- UNHCR

C *Actions*

Development of training curriculum and training of Danish authorities:

- Officers will be trained in a curriculum that includes international and national returnee rights, best practices and standards for the practical implementation of return operations, returnee conditions and special needs;
- The curriculum will be developed in cooperation with the DRC, Danish National Police, European partners, stakeholders in the countries of return and returnees;
- A "training-of-trainers" (ToT) on return issues will be conducted for two experts;
- The ToT will be followed by a re-evaluation session six months later.

Development of training materials and dissemination in EU Member States:

- Based on the curriculum and hands-on experience from training, an international set of training materials will be developed;
- The training materials and a report on best practices in preparing and implementing return operations will be distributed to all Member State authorities involved in return operations and to selected civil society organizations;
- A seminar will be convened with presentations of the project concept and findings for NGOs from all EU Member States at the ECRE biannual general meeting.

D *Review*

The project addresses the need to develop the capacity of authorities preparing and implementing return operations. The project generally seeks to improve return practices and create better conditions for sustainable returns. The project is still being implemented and has not yet been evaluated.

E *Further information* is available on the DRC's website, www.drc.dk.

1.2 Promoting and assisting voluntary and sustainable return

Voluntary return can be promoted and supported in many ways, including:

Establishing a referral system to entities and actors assisting with voluntary return. This requires that government and non-governmental actors working in other parts of the migration system, such as the asylum system, are aware of and have information about support available on voluntary return. It also requires that specific entities and agencies are available so that potential returnees can be referred to them.

In Belarus, a case-referral system has been developed between NGOs dealing with asylum issues and IOM for processing persons wishing to return under the IOM Assisted Voluntary Return Project.

Counseling, to ensure that people are properly informed about their options, the situation in the country of origin, and available support that will enable them to make an informed choice. Such counseling could be offered at different stages: upon arrival, during the asylum or other procedures, and after a return order has been issued.

SWEDISH MIGRATION SYSTEM – MOTIVATIONAL COUNSELING SESSIONS

A *Background and Rationale*

The Swedish Migration Board is responsible for taking decisions on migration, asylum, repatriation and citizenship issues. For asylum cases, the Board assigns a caseworker to each asylum-seeker to make referrals for medical care, counseling and other services once the application has been lodged. The objective of the “motivational counseling”

sessions provided by caseworkers is to prepare asylum-seekers for all possible outcomes of their asylum claim, particularly the eventuality of return. The counseling sessions also allow caseworkers to identify those persons who may be likely to abscond in the event that their claim is rejected and are thus able to take appropriate action to prevent them from doing so.

B *Actors*

- Asylum-seekers
- NGOs
- Swedish Migration Board

C *Actions*

The motivational counseling sessions provide asylum-seekers with information on three possible options available to them if their claim for asylum is rejected:

- They may choose to return on their own to their country of origin and take responsibility for making all the necessary arrangements. For a certain number of countries, the Board will provide them with funds for the cost of travel and reintegration assistance.
- They can be handed over to the police and held in custody. This may occur in the following circumstances:
 - Where the individual has already absconded, committed a criminal act or other circumstances in which the Board decides that coercive measures may need to be employed; and
 - Where rejected asylum-seekers are assessed by caseworkers to be at risk of absconding.

D *Review*

The motivational counseling sessions have increased the number of rejected asylum-seekers choosing to return to their country of origin partly because they are aware of the options available to them and partly because assisted voluntary returns are perceived as a more dignified way of returning than forced return.

E *Further information*

Further information on the Swedish Migration Board and motivational counseling sessions is available on the Board's public website at: <http://www.migrationsverket.se/english.html>.

Country-of-origin information: up to date information on the conditions within the country of origin helps the individual to prepare for return and plan reintegration. While this information can assist in identifying whether and which groups could be threatened with persecution or human rights violations upon return, it can also include information on the socio-economic conditions in the country.

COUNTRY OF RETURN INFORMATION (CRI) PROJECT 2008

A *Background and Rationale*

The European project on Country of Return Information (CRI) brings together a network of NGOs that collects and transfers information on reintegration possibilities for persons to be returned to their countries of origin.

B Actors

The following are the NGOs involved in gathering information:

- Asociación Comisión Católica Española de Migración (ACCEM), Spain
- Caritas International, Belgium
- Consiglio Italiano per i Rifugiati, Italy
- Coordination et Initiatives pour les Réfugiés et Etrangers (CIRE), Belgium
- Dansk Flygtningehjaelp (DRC), Denmark
- Vluchtelingenwerk Vlaanderen, Belgium

C Actions

The project makes information accessible through country reports, country fact sheets and presentations, and also provides a unique helpdesk service for persons wishing to make specific queries.

The project provides information on the following issues:

- **Territorial access:** Does the individual have access to the country of origin?
- **Personal safety:** Does the individual have safe access to his/her region and will the individual be protected from risk to his/her physical safety?
- **Reintegration opportunities with regard to accommodation, employment, social security, health care, education:** Will the individual be able to find durable accommodation corresponding to local standards and be able to ensure his/her and his/her family's livelihood and a standard of living corresponding to local standards?

D Review

The project is innovative in providing detailed information on the country of origin with a focus on reintegration possibilities and local safety risks.

The information provided is drawn from a wide variety of sources, ranging from general to applied research (academic articles to empirical studies), and from a variety of actors (national and sub-national in sending and receiving States).

E Further information

available at <http://www.cri-project.eu/>.

The “**Return Information Fund**” of IOM Bern provides actors involved in processing returns from Switzerland with information on socio-economic matters in selected countries of origin. Further information is available (in German) at: <http://www.ch.iom.int/programme/rif.html>.

Participation of returnees in planning the return process can build an individual's confidence in the prospect of return and can increase their willingness to return voluntarily. It can also help to identify needs that require specific return assistance.

Reintegration assistance, matched with the migrant's profile and country specific, contributes to the sustainability of return. Reintegration assistance can include cash grants, vocational training, and loans for business development. But more successful than lump-sum payments in the host country are vocational training programmes and grants for business/micro-enterprise development in the country of return. Good results have been achieved where assistance is offered to both the individual and the community to which he/she is returning. Lump-sum payments have not always proved successful for reintegration.

IOM: Assisted Voluntary Return (AVR) programmes

Assisted Voluntary Return (AVR) aims at orderly, humane and cost-effective return and reintegration of migrants who are unable or unwilling to remain in host countries and wish to return voluntarily to their countries of origin. It responds to specific humanitarian needs of these migrants. IOM has been implementing AVR programmes for three decades together with national counterparts and a network of partners both in host and origin countries.

Pre-departure, transportation and post-arrival assistance is provided to unsuccessful asylum-seekers, migrants in an irregular situation, migrants stranded in transit, stranded students and other persons under similar circumstances. IOM return programmes are either available to all migrants in an irregular situation, or tailored to the particular needs of specific groups, including vulnerable migrants. The assistance typically provides information, referral, arrangement of travel to the home location and limited support towards reinsertion. AVR assistance may also include profiling of target groups, information and counselling to potential returnees, medical assistance, reception and longer-term reintegration assistance in countries of origin in order to facilitate sustainable returns. Most of IOM AVR programmes include an evaluation component.

Further information and an overview of the specific country projects is available at www.iom.int.

IRRICO Project (Information on Return and Reintegration in Countries of Origin)

Among AVR programmes, the IRRICO Project offers a multilateral approach on return information among IOM missions in countries of origin and their European counterparts in support of Assisted Voluntary Return and Reintegration programmes. The project aims to gather and consolidate information on countries of origin, which will help social workers and return counselors in providing migrants with reliable and up-to-date information on return and reintegration possibilities and socio-economic conditions, including housing, health, transport, and social security.

Further information on this project can be found at www.iom.int/irrico.

UNHCR/IOPCR ASSISTANCE IN THE VOLUNTARY RETURN OF NON-REFUGEES, LIBYA, 2007

A *Background and Rationale*

Many non-refugees without residence permits remain stranded in Libya and risk detention for illegal entry and stay. Lack or loss of valid travel documents often prevents those willing to travel home from doing so. The project aims to assist non-refugees in returning home and to support the Libyan authorities and other partners in carrying out voluntary returns in accordance with international human rights standards and principles.

B *Actors*

- International Organization for Peace, Care and Relief (IOPCR)
- UNHCR

C *Actions*

- UNHCR and IOPCR conduct profiling missions in various reception centres throughout Libya and identify people not in need of international protection who are willing to return to their country of origin;

- UNHCR establishes the voluntariness of the return and that none of the returnees has international protection needs;
- IOPCR assists in issuing travel documents and exit visas in a timely and accurate manner, organizes travel arrangements, and hands out return grants;
- UNHCR liaises with the Libyan authorities, embassies and relevant stakeholders in order to facilitate and accelerate the return process;
- In total, 500 persons have returned (200 in 2007 and 300 in 2008), most of them to south Sudan;
- Guidelines and standard operating procedures are being developed.

D *Review*

Finding solutions for these stranded migrants has encouraged the Libyan authorities to accept UNHCR's 10-Point Plan of Action. In addition, the authorities have granted UNHCR and its partner access to the detention centres, and allowed them to provide assistance and protection to detainees. The number of deportations was significantly reduced, and prolonged imprisonment for illegal entry and stay could be avoided for those who want to return voluntarily. The local authorities have agreed to release ten detainees per week while UNHCR processes their repatriation. Furthermore, the return of non-refugees has increased the willingness of local authorities to consider local integration of refugees.

TOWARDS AN INTEGRATED RETURN: CASE-CHAIN MANAGEMENT GERMANY, SWEDEN, THE NETHERLANDS, 2006

A *Background and Rationale*

The project aims to ensure the sustainability of returns of persons who, either voluntarily or by ordered return, must return to their home country. The partners cooperating in this project want to establish chains of institutions to assist in the returns. A training project ensures that case-chain managers have the necessary skills and expertise to assist returnees.

B *Actors*

Institutions in host countries (Germany, Sweden, the Netherlands):

- AGEF (Arbeitsgruppe Entwicklung und Fachkräfte im Bereich der Migration und Entwicklungszusammenarbeit), Germany
- COA (Centraal Orgaan opvang asielzoekers), the Netherlands
- Coming Home (Municipality of Munich, Amt für Wohnen und Migration), Germany
- Goeteborg Initiativet, Sweden
- HIT Foundation, the Netherlands
- Partner institutions in selected countries of return (Afghanistan, Iraq, Kosovo)

C *Actions*

- Returned persons from Germany, Sweden and the Netherlands are channeled to specific return countries like Afghanistan, Iraq and Kosovo through an internet-based case-management system. In these countries, return services are provided by regional offices of AGEF and others;

- Returnees receive counseling regarding their options in the home country, including economic and social possibilities;
- Upon return to the home country they are provided with employment services, on-the-job training, and employment-promotion packages;
- After their business plans are approved, returnees are given financial support for a specific period of time;
- A training project ensures that counselors from participating organizations have the necessary expertise to develop integrated return plans.

D *Review*

Returnees receive assistance for their economic reintegration from specialized service providers. This assistance is especially useful for people returning to post-conflict situations where national capacities have not yet been established. The project aims to empower returnees and to enhance their personal and professional skills that, in turn, will help them to reintegrate and achieve a sustainable return.

The project focuses on the economic aspects of re-integration but it should also take into account the social and psychological aspects of the reintegration process, such as discrimination against returnees by receiving communities.

E *Further information* available at <http://www.ccm-training.net/>.

1.3 *Return of people with specific needs*

People with specific needs may require targeted assistance during return and re-integration. When return is in the best interests of an unaccompanied child, family reunification or placement in foster care in the country of origin should be arranged beforehand. Victims of trafficking may continue to need medical and psychological attention and specific re-integration support to ensure that they are not re-trafficked. In some cases, the availability of such arrangements may determine whether or not the individual can be asked to return.

In **Central America, guidelines ensuring that the specific needs of child victims of trafficking** are taken into account have been adopted on both regional and national levels:

- Regional Guidelines for the repatriation of child victims of trafficking, Central America
- National Protocol on the repatriation of child and adolescent victims of human trafficking, Costa Rica

See Chapter VI.

IOM Handbook on organizing the return and reintegration of vulnerable persons

The Handbook was prepared by IOM Bern in 2007 upon request from the Swiss Federal Office for Migration for Swiss social workers, return counselors and other actors dealing with return assistance. It includes general information on migration and categories of vulnerable persons and addresses some practical issues relating to return and reintegration of vulnerable persons, such as elderly and persons with medical needs, victims of trafficking, unaccompanied minors.

Further information is available at <http://www.ch.iom.int/fr/publikationen.html>.

1.4 Cooperation between host country and country of origin

Cooperation by a host country with the country of origin can increase that country's willingness to facilitate the return of their nationals. It also helps to ensure that return takes place in an orderly and predictable manner. Cooperation with key government and non-governmental actors in the host country could include assessing the impact of returns on the home country and providing financial support. Financial support to return communities can increase the sustainability of return by improving the socio-economic circumstances of those communities. States often formalize operational arrangements on return in the form of bilateral readmission arrangements. These accords are often coupled with agreements on development assistance and other financial support.

Additional to bilateral cooperation agreements, the return of non-refugees has been a topic at many regional consultations processes (see Chapter I).

IOM “CLUSTER INITIATIVE” BETWEEN COUNTRIES IN WESTERN EUROPE AND THE SOUTH CAUCASUS, 2001

A Background and Rationale

IOM promotes a regional process among countries of origin, transit and destination to make better use of the assisted voluntary return services it provides to States to administer returns. An example of this process is the bilateral “cluster initiative” initiated for countries of the South Caucasus (Armenia, Azerbaijan and Georgia) and those in western Europe (Belgium, Denmark, Germany, the Netherlands, Sweden and Switzerland). This initiative provides a platform for consultative meetings among representatives of concerned ministries to discuss practical and concrete activities for managing returns.

B Actors

- Countries of origin
- Countries of transit and destination (as noted above)
- IOM

C Actions

The first phase of the cluster initiative began in 2001 and 2002. The purposes of this early phase of the process were:

- To increase effective cooperation on return of unsuccessful asylum-seekers and other persons among the irregular migration flow, including by strengthening the border-management capacities of the South Caucasus through border-guard training and technical assistance;
- To facilitate voluntary return and reintegration of persons returning home through capacity-building in migration management in countries of origin; and
- To establish mechanisms for working together to prevent irregular migration, including information campaigns in the South Caucasus to help prevent irregular migration.

The new phase, in place since 2006, focuses discussions on opening up more regular migration avenues, including labour migration in countries of transit and destination.¹

¹ The project is funded by the European Commission's AENEAS programme and entitled “Informed Migration – An Integrated Approach to Promoting Legal Migration through National Capacity Building and Inter-regional Dialogue between the South Caucasus and the EU”.

D *Review*

The cluster initiative provides a forum for facilitating technical cooperation among migration authorities in Europe and the South Caucasus.

As a result of the project, each country in the South Caucasus has established special mechanisms within its ministries to expedite coordination with European counterparts and facilities to disseminate information and counseling to nationals who may be returned.

AGREEMENT BETWEEN SWITZERLAND AND SRI LANKA ON THE RETURN OF UNSUCCESSFUL ASYLUM-SEEKERS FROM SRI LANKA, 1994 - 1996

A *Background and Rationale*

On 11 January 1994, the Governments of Switzerland and Sri Lanka concluded an agreement for the return of unsuccessful asylum-seekers in Switzerland to Colombo, Sri Lanka.

B *Actors*

- Government of Sri Lanka
- Government of Switzerland
- UNHCR

C *Actions*

The agreement includes the following protection safeguards:

- Reiteration of principle that return has to take place in safety and dignity;
- Offering of financial assistance to returnees by the Swiss government;
- Issuance of valid travel documents to all returnees prior to departure and necessary residence documents upon return;
- Phased-in return;
- Request to UNHCR to act as liaison between the returnees and the two parties and to assist in addressing problems encountered by returnees and, to that end, agreement to share information and cooperate with UNHCR;
- Returnees not to be forced to areas where there are still mines;
- Possibility for returnees to reside in temporary holding centres in Sri Lanka administered by the Sri Lankan Red Cross.

D *Review*

As a result of the agreement there was a systematic and orderly return of manageable numbers of individuals rather than sudden and large-scale arrivals. The number of cases of returnees kept in detention upon arrival decreased and with it cases of ill-treatment of returnees. Only a limited number of Sri Lankan nationals were returned on the basis of the agreement, and they were returned involuntarily. The monitoring mechanisms were criticized as being not sufficiently effective.

E *Further information*

Agreement between Switzerland and Sri Lanka on the return of Sri Lankan nationals who have been rejected in the Swiss Asylum Procedure – Annex 1

Further information on readmission agreements:

Database of the MIREM project (Return Migration to the Maghreb) of the European University Institute provides an inventory of bilateral agreements concluded by each of the 27 Member States of the European Union over the last decade.

More information is available at <http://www.mirem.eu/datasets/agreements/>.

1.5 Post-return monitoring

Independent monitoring during the post-return phase ensures that returnees are not subject to protection risks upon return and that they can access reintegration services. This builds confidence among returnees and encourages voluntary return. Monitoring can also help to identify and address shortcomings in the return process.

KOSOVO AIRPORT MONITORING OF FORCED RETURNS, 1999

A Background and Rationale

UNHCR has been implementing a forced return-monitoring project at Pristina International Airport since 1999 in order to gather data, monitor trends in forced return and potential protection gaps. UNHCR's airport-monitoring team systematically interviews and records all minority forced returnees. All persons who need further assistance are referred to appropriate agencies, and protection monitoring is undertaken by UNHCR field officers.

The ATRC Airport Monitoring Team (AMT) is based at Pristina International Airport. Team members record and document the arrival of all forced and alleged forced returns announced as voluntary. The AMT maintains close cooperation with all relevant actors at the airport, particularly with UNHCR's Office of the Chief of Mission's (OCM) Protection Unit, to ensure prompt interventions as needed.

B Actors

- ATRC Airport Monitoring Team
- UNHCR

C Actions

ATRC Airport Monitoring team:

- Monitors the arrivals of minority returnees, with the aim of identifying vulnerable individuals and members of ethnic minorities of concern, according to UNHCR;
- Monitors asylum-seekers arriving at Pristina International Airport and immediately notifies the UNHCR OCM Protection Unit, with the aim of ensuring access to asylum procedures and preventing the misuse of asylum procedures;
- Responds to the needs of vulnerable men and women by referring them to the appropriate international and local authorities and structures;
- Reports to UNHCR's Protection Unit on individual interviews and return statistics;
- Coordinates with UNHCR's Protection Unit and other agencies concerning individuals in need of shelter.

D *Review*

The permanent presence at the point of arrival and the strong relationships with border officials enable the ATRC to monitor the situation on the ground. This places the ATRC in a unique position to notify UNHCR immediately about any changes in the environment that may signal serious problems. However, Pristina airport is not the only entry point for involuntary returns and some form of monitoring of other border-crossing/entry points should be required in the future.

Under the new Readmission Policy, the ethnicity of returnees is no longer reported by the sending countries, which will make it more difficult for the ATRC to identify forced returnees from minority groups, unless the returnee discloses this information himself/herself.

2**Migration (including regularization) options for non-refugees**

Some non-refugees may be able to legalize their stay in the host country based on opportunities provided by that the country's migration laws, or take advantage of opportunities to legally migrate onwards to a third country. Such migration options are generally only open to people with specific profiles, for example, persons with particular skills who can fill a labour shortage, and persons with family or other specific links (ethnic affiliations) to the host or the third country. Many countries also regularize stay on limited humanitarian grounds, such as for persons with specific needs or who are unable to return to their country of origin for various reasons. But there also examples of larger regularization programmes from which all people, or all those who fulfill certain requirements, can benefit. Migration options for non-refugees are also generally open to refugees (see Chapter VII).

**TEMPORARY REGULARIZATION PROGRAMME
THAILAND, 2003 – 2004****A** *Background and Rationale*

Thailand receives a continuing influx of immigrants from neighbouring countries. The largest immigrant groups are from Myanmar, Cambodia and Laos People's Democratic Republic (PDR). Since 2003, Thailand has concluded a number of bilateral and sub-regional agreements, especially with neighbouring countries, on migration-related issues, including employment of workers, and has run regularization programmes.

B *Actors*

- Government of Laos PDR
- Government of Myanmar
- Royal Government of Cambodia
- Royal Thai Government

C *Actions*

- In 2003, Thailand signed Memoranda of Understanding on "Employment Cooperation" with the above-mentioned three countries and agreed on a temporary regularization of workers from these countries illegally present in Thailand and on their return to Cambodia upon completion of their services in Thailand. The agreement also offered legal migration opportunities for people wanting to migrate to Thailand;

- In 2004, Thailand conducted a nationwide migrant-registration campaign and authorized migrants and their families from these countries to stay and work in Thailand for a fixed period of time. Fifteen percent of the wages of the migrant workers are to be withheld and used to finance their return.

D *Review*

The initiative has regularized the presence of migrant workers (domestic workers are excluded from this Agreement) without status in Thailand (1.3 million were registered), thus giving them more protection under labour standards. However, it permitted employers in Thailand to retain the travel documents of Cambodian workers and requires that 15% of the workers' wages are withheld.

E *Further information*

Thailand: Intergovernmental cooperation on temporary migrants. Information note for the 13th Economic Forum Prague 23 – 27 May 2005 – Annex 2

Also available at www.osce.org/item/14679.html.

HARDSHIP COMMISSIONS GERMANY, 2004

A *Background and Rationale*

Section 23a of the German Residence Act allows the Federal States (Laender) to grant a residence permit to a foreigner who would otherwise be obliged to leave Germany if a "Hardship Commission" has made such a recommendation. This provides the authorities with the possibility to review and possibly correct the refusal to issue a residence permit. By the end of 2006, all 16 German states had established such independent Commissions.

B *Actors*

- Authorities of Federal States
- Hardship Commissions, composed of representatives of the regional authorities, the churches, civil society associations and NGOs

C *Actions*

- Requests for consideration of a case as a hardship case by one of the Hardship Commissions may be directed to any member of the responsible Hardship Commission. The request must be accompanied by all documents and facts that might support the claim for continued residence in Germany, including CVs, medical reports, and commitment from a potential employer.
- The foreigner must convince the Commission that his/her departure from Germany presents a special hardship. The criteria employed vary, but all Hardship Commissions restrict their examination to facts relating to the foreigner's situation in Germany and require that the applicant is not subject to an extradition order. Some Hardship Commissions exclude applicants whose hardship situation is the result of self-inflicted reasons, if the person just entered the country, or if the applicant, prior to his/her application, was deported, returned or extradited. A request to a Hardship Commission can be made only once.

- On average, the Hardship Commissions gave positive decisions in 61% of all admissible individual requests. However, there are great differences in the decision practices among the individual Hardship Commissions.
- Protection against deportation during the hardship procedure varies from one federal state to the other. The Statutes of most other Hardship Commissions do not exclude deportation. In practice, however, persons who have applied to one of the Hardship Commissions are usually not returned before a decision on their case has been taken.
- It is at the authorities' discretion whether or not to follow a recommendation of the Hardship Commission. In 86% of all petitions received from the Hardship Commissions, authorities decided to grant a residence permit. In most positive decisions, a long duration of stay, good command of the German language and the presence of children in education were decisive factors. Serious health problems and the need for medical and/or psychological treatment were regarded as justifying the issuance of a petition by the Hardship Commissions only in exceptional cases.

D *Review*

The establishment of the Hardship Commission is generally perceived as a success, as it allowed the authorities to consider individual circumstances and issue residence permits beyond strict legal requirements.

Many applicants were able to legalize their stay in Germany. Since the introduction of the Hardship Commissions in 2005 and until December 2008, more than 4,000 requests for consideration as hardship cases were registered by the Hardship Commissions throughout Germany. The majority of the applicants originate from Kosovo (3,828 individuals) and Turkey (834), followed by Bosnia (277), Vietnam (253) and the Republic of Congo (188). Some 241 applicants were stateless or their country of origin was unknown.

The significance of the Hardship Commissions was recently diminished by the introduction of a long-stay regulation that allows foreign nationals in possession of a "toleration permit" to legalize their stay, if they have resided in Germany for more than six years (families) or for more than eight years (single persons) and are self-sufficient. However, this regulation will expire on 31 December 2010 and no subsequent regulation has been discussed so far.

E *Further information*

Section 23a Residence Act is available at http://www.migrationsrecht.net/component/option,com_docman/Itemid,127/task,doc_download/gid,795/.

further information on the Hardship Commissions is available at the websites of the Hardship Commissions, such as Hardship Commission Saarland <http://www.haertefallkommission.saarland.de/> and Hardship Commission of Nordrhein-Westfalen <http://www.im.nrw.de/aus/25.htm>.

An overview, "Die Hartefallkommissionen der Bunderlander", produced by Amnesty International and FachKommission Asyl, December 2008, is available at: http://www.emhosting.de/kunden/fluechtlingerrat-nrw.de/system/upload/download_894.pdf.

The Council of Europe's Parliamentary Assembly "Report on Regularization Programmes for Irregular Migrants", document 11350 of 6 July 2007, examines the experience of a number of European States in regularizing irregular migrants. The report examines the advantages and disadvantages of regularization programmes by drawing on experiences of past regularization schemes in various countries of the European Union. It distinguishes between permanent, temporary, and earned regularization programmes and analyses criteria, history, and demographics of regularizations. *See Annex 3.*

Martin Baldwin-Edwards and Albert Kraler, *REGINE Regularizations in Europe: Study on practices in the area of regularization of illegally staying third-country nationals in the Member States of the EU (2009)*. The ICMPD study on regularizations in Europe provides a review of regularization practices in the 27 EU Member States, Switzerland and the US, and discusses the main policy issues and possible policy options in regard to regularization on the EU level.

The Study is available at <http://research.icmpd.org/1184.html#c2831>.

UNHCR Support Available

UNHCR may assist partners by:

- Supporting States in their efforts to return non-refugees, provided its involvement is fully consistent with its humanitarian mandate to protect refugees;
- Assisting sending States in verifying that returnees have no international protection needs and take a clear public position on the acceptability of return;
- Facilitating access to documentation and return of stateless persons;
- Encouraging IOM and other partners to establish assisted voluntary return programmes and lobbying for funding.

List of Annexes and Selected References

Annexes

- Annex 1:** Agreement between Switzerland and Sri Lanka on the return of Sri Lankan nationals who have been rejected in the Swiss Asylum Procedure, 1994 – 1996.
- Annex 2:** Thailand, Intergovernmental cooperation on temporary migrants, Information note for the 13th Economic Forum, Prague, 23–27 May 2005.
- Annex 3:** The Council of Europe’s Parliamentary Assembly, “Regularization programmes for irregular migrants”, document 11350 of 6 July 2007.

Selected References

UNHCR Executive Committee Conclusion No. 96 (LIV) on the return of persons found not to be in need of international protection, 2003.

UNHCR, Standing Committee, Return of persons not in need of international protection, EC/47/SC/CRP, 30 May 1997.

UNHCR, “Legal and practical aspects of the return of persons in need of international protection”, background paper, Geneva, May 2001.

UNHCR, Global Consultations on International Protection/Regional Meetings: Conclusions (Regional Meeting in Budapest, 6-7 June 2001), EC/GC/01/14, 15 June 2001.

United Nations General Assembly Resolution 45/90 of 14 Dec 1990, 46/106 of 16 December 1991, 47/105 of 16 December 1992, on the responsibility of countries of origin for the return of their nationals.

IOM, IOM-assisted Voluntary Return Programmes in Europe, May 2002.

Council of Europe, Committee of Ministers, “Twenty Guidelines on Forced Return”, 4 May 2005.

Danish Refugee Council, “Recommendations for the Return and Reintegration of Rejected Asylum-seekers; Lessons Learned from Returns to Kosovo”, May 2008.