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The Newsletter of UNHCR's Department of International Protection

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The End of the Beginning

The expert roundtables and multilateral meetings are over, but the process begun by the 18-month Global Consultations is now entering its most challenging phase. The recommendations on how to improve refugee protection culled over this past year-and-a-half must now be put into action. The blueprint for the way forward is the Agenda for Protection.

Agenda for Protection

Adopted by the Standing Committee in June and expected to be endorsed by ExCom this month, the Agenda for Protection sets out clear goals and objectives and enumerates specific activities, to be implemented over the course of several years, that will improve the protection of refugee and asylum-seekers around the world.* Although it is the product of the thinking and strategizing that occurred during the past 18 months, the agenda is not an intellectual exercise; it is rooted in the realities of today's protection challenges and suggests concrete measures to confront those challenges. It is not a legally binding document, but it reflects a broad consensus on the way forward.

In an August memorandum to all HCR staff, the High Commissioner noted that he had "commended

the Agenda to...senior managers as UNHCR's global action plan...It is...a significant document with which all substantive officers should become familiar." But while the Agenda is both a strategic-policy and an operational-planning document for HCR, it also calls on HCR's principal partners—States, NGOs and IGOs—to do their part in strengthening the international protection regime. "It is not DIP's [the Department of International Protection] Agenda for Protection," says DIP Director Erika Feller. "It is HCR's and States' Agenda for Protection."

The Agenda is composed of two sections: the Declaration of States Parties, adopted at the conclusion of the December 2001 Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol, and a program of action,

which includes specific objectives and activities grouped according to six main goals: strengthening implementation of the 1951 Convention and its 1967 Protocol; protecting refugees within broader migration movements; sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees; addressing security-related concerns more effectively; redoubling the search for durable solutions; and meeting the protection needs of refugee women and children. In effect, the Declaration, through which States Parties reaffirm the centrality and validity of the Convention, underpins the entire program of action.

With the Agenda as guide, HCR is setting its own priorities for the coming months. The agency will work with States Parties, through capacity-building activities and advisory services, to encourage a more harmonized, liberal application of the Convention's basic provisions. In situations where the Convention, alone, does not adequately address the given protection problems, HCR will work with States to design imaginative ways to resolve those problems.

HCR will promote greater responsibility-sharing among States, particularly in the context of the asylum-migration nexus and the prob-



lem of secondary movement out of safe first countries of asylum. “We have burden-sharing mechanisms to work with, but these are pieces of a jigsaw puzzle,” says Feller. “Clearly there are some pieces missing, because they don’t yet make a whole picture.”

HCR will also be looking at the possibility of extending the legal framework of refugee protection, including through special agreements with governments, in order to ensure that the Convention is implemented even in complex circumstances. A focus on standard-setting will not necessarily mean creating new standards, but rather devising new ways of implementing existing standards. This will include issuing revised guidelines on a variety of issues (*see next page*) and producing an updated complement to HCR’s *Handbook on Procedures and Criteria for Determining Refugee Status*.

"[The Agenda for Protection] is about all of us, individually and collectively, doing better what we are mandated to do and what we have voluntarily committed ourselves to accomplish."

According to Feller, “ExCom and the Standing Committee have a major role to play” in bringing the Agenda to fruition. The June Standing Committee, which regularly discusses protection issues, may consider raising specific problems in implementing protection standards that could then be examined by the body. The process of reflection, analysis and strategizing on a broader scale, begun during the Global Consultations process, can continue through a multilateral forum, which, in turn, can be linked to ExCom through regular reports. “There was general agreement among States and our other partners that we should not lose the momentum of the Global Consultations, that we should not fall back into the pattern of the recent past, when there were just *pro forma* discussions on protection, when participation in those discussions was limited to States representing a very narrow geographic range, and when there was little intellectual and expert engagement in those discussions,” says Feller.

How the implementation of the program of action will be monitored is still under consideration. In the end, HCR may seek the relevant information from governments and then report back regularly to ExCom on both HCR’s and States’ progress in implementing the program. For now, the next step for HCR, States and other protection partners is to begin to follow the Agenda they have crafted. As Feller told the Standing Committee in June, “[The Agenda for Protection] is about all of us, individually and collectively, doing better what we are mandated to do and what we have voluntarily committed ourselves to accomplish.”

The full text of the Agenda for Protection can be read by clicking on Agenda for Protection on the Global Consultations page of HCR’s web site (www.unhcr.org).

* Internally displaced persons are not mentioned in the Agenda because the Global Consultations process addressed issues related specifically to the protection of refugees and asylum-seekers.

Second Track

In recent months, a number of high-profile rescue-at-sea incidents have raised difficult questions for ships' masters, States and international organizations concerning disembarkation and the reception and processing of those rescued. In an attempt to stem the flow of "boat people", which usually represents a mix of asylum-seekers and other migrants, destination States have increasingly resorted to intercepting vessels, sometimes without due regard for protection concerns.

Against this background, and as part of its Global Consultations process, HCR convened an Expert Roundtable in Lisbon last March to examine the protection of asylum-seekers and refugees in the context of rescue-at-sea. Thirty-three participants from governments, the shipping industry, international

organizations, NGOs and academia took part in the two-day session. Participants broadly agreed that rescue-at-sea is first and foremost a humanitarian act, with the alleviation of distress the absolute imperative, regardless of who the people are and how they came to be where they are. Ships' masters are obliged, by maritime law and by humanitarian tradition, to come to the assistance of persons in distress at sea and deliver them to a safe place. In determining where to land the rescued persons, the professional judgment of the ships' masters should be respected; and masters have the right to expect the support of coastal States in completing rescue missions.

Participants also acknowledged that a commercial vessel is not normally the place to determine the character or status of those rescued, nor should it be used as a floating detention center. Processing and status determination is best done on dry land, and

Guidelines on International Protection

The primary aim of the Second Track expert roundtables was to clarify and refine HCR's thinking on several legal issues related to refugee protection. As a result of those discussions, DIP's Protection Policy and Legal Advice Section has produced and issued the first in a series of *Guidelines on International Protection*. Guidelines on gender-related persecution and on membership of a particular social group, both issued in May, were drawn from Second-track discussions held in San Remo last September. These and forthcoming guidelines, which will replace previously-released guidelines and position papers on the same subjects, are intended to provide governments, legal and judicial practitioners and HCR staff with interpretative guid-

ance on legal issues concerning refugee status and protection.

"There's a lot of good work being done by HCR, but there's never been a good format through which our views have been made public," says Volker Turk, Chief of DIP's Protection Policy and Legal Advice Section. "There are bits and pieces, here and there, in different documents, in different forms. We wanted to create this systematic series of guidelines to disseminate and promote a consistent approach to refugee law issues and to make our views accessible to the public."

The Section is also drafting guidelines on the application of the 1951 Convention's exclusion and cessation clauses, on internal flight alternatives and on family unity. All of these, as well as guidelines on trafficking, will be issued over the next year.

Eventually, all the guidelines will be gathered into a single publication to be read in conjunction with HCR's *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*.

In addition, HCR is working with Cambridge University Press on a book of updated and partially revised versions of the expert background papers used for the Second Track roundtables. The book, which will also contain the various summaries of the four roundtable discussions, will be published in 2003.

The Guidelines are posted on HCR's web site (www.unhcr.org): click on Protecting Refugees, then click on Protection Publications.

the State that provides for disembarkation should take steps to ensure there is access to fair and efficient procedures for those who claim asylum. However, it is not necessarily the disembarking State that is responsible for finding solutions. International burden-sharing arrangements that involve cooperation in processing asylum applications and/or providing durable solutions, including resettlement, can help resolve complex rescue scenarios. States should ensure that any measures to combat smuggling or trafficking in persons do not undermine the international refugee protection regime.

The conclusions of the roundtable were broadly supported by all participants and were similarly well-

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received when discussed among an inter-agency review group convened by the International Maritime Organization to examine matters related to the rescue of asylum-seekers and refugees. The first meeting of this group was hosted by

HCR in early July. Representatives of the International Maritime Organization, the International Organization for Migration, the Office of Legal Affairs (Division for Ocean Affairs and the Law of the Sea), the Office for Drug Control and Crime Prevention, the Office of the High Commissioner for Human Rights, and HCR, drew on the recommendations of the expert roundtable in determining how to ensure appropriate responses to the challenges posed by rescue at sea. The Lisbon discussions also informed an inter-State meeting, held in Sweden in early September, in which participants identified and explored ways to fill the gaps that now exist in maritime law.

For more information on this Second Track meeting, contact HCR's Grainne O'Hara (ohara@unhcr.org).

Third Track

The fourth and final Third Track meeting of the Global Consultations, held in Geneva in late May, examined five main topics under two broad themes: "The Search for Protection-based Solutions" (topics included voluntary repatriation, resettlement and local integration) and "Protection of Refugee Women and Refugee Children".

Participants recognized that **voluntary repatriation** is the durable solution sought by most refugees; yet delegations agreed that refugees should not be left to languish in refugee camps for long periods. Various recommendations were made to help resolve protracted refugee situations, improve conditions for voluntary repatriation and strengthen cooperation to make repatriation sustainable. Among these recommendations:

- HCR to review all protracted refugee situations and to explore with States and other partners comprehensive plans of action to resolve them, including "package deals" that would involve burden-sharing arrangements and combinations of voluntary repatriation, resettlement and local integration.
- Countries of origin, working with HCR and other relevant partners, to commit themselves to respecting the right to return and developing frameworks to guarantee physical, legal and material safety for returnees.
- Countries of origin and asylum, working with HCR, to promote voluntary repatriation through such measures as "go-and-see visits" and information exchanges between refugees and home-country officials.
- HCR to update its 1996 *Handbook on Voluntary Repatriation*.
- HCR to draft an ExCom Conclusion on legal safety, including property-related issues, in the context of repatriation.
- HCR to work with States, development partners and returnees to build community-based reintegration programs, focusing especially on housing, essential services and reconciliation.

Resettlement is not only one part of a comprehensive protection strategy, it is also a protection tool and a demonstration of solidarity and burden-sharing among States. Participants agreed that, given the

increasing demand for resettlement places, more countries should open their doors to resettlement. To expand resettlement opportunities and make more efficient use of resettlement, both as a protection tool and as a durable solution:

- States that do not yet offer resettlement opportunities to consider making some resettlement places available.
- States and HCR to develop capacity-building programs with new resettlement countries, including training and “twinning” arrangements.
- States and HCR to streamline processing of applications for resettlement, focusing on protection needs.
- States and HCR to give greater consideration to gender-related protection needs, in addition to the women-at-risk category, in their resettlement programs.

Participants welcomed the renewed focus on **local integration** as a durable solution and on the strategy of refugee self-reliance. Delegations acknowledged that tapping the potential of refugees and encouraging self-reliance can avoid dependency on assistance and help prepare for both repatriation and local integration. To promote local integration and foster self-reliance:

- States to examine how and when to offer secure legal status and residence rights, including naturalization, for refugees who have attained a considerable degree of socio-economic integration.
- ExCom to formulate a Conclusion on local integration that reflects refugees' needs, international and national legal standards, and the socio-economic realities of host countries.
- HCR, States and other partners to explore relief-substitution strategies through which refugee and local women can produce certain items themselves, rather than becoming dependent on aid.
- States to consider expanding education

and vocational training, and agricultural and other income-generating projects and to ensure they are equally accessible to men and women.

Given that women account for more than half of the population that benefits from HCR's programs, participants agreed that all partners—HCR, States and NGOs—must share the responsibility for ensuring that women receive international protection and that their concerns are addressed. To improve **protection for refugee women**:

- States, HCR and NGO partners to ensure that refugee women participate equally in all areas of refugee life, particularly in making decisions that affect them.

“...Rather than treating refugees simply as a burden, host governments and the international community should recognize that refugees can be agents of development. Refugees are often accommodated in remote areas which are poorly developed. In developing these areas and using the productive capacity of refugees, there can be benefits both for the local society and for the refugees themselves.”

-High Commissioner Ruud Lubbers speaking about local integration as a durable solution in an address to the 24th Meeting of the Standing Committee, 24 June 2002, in Geneva

- HCR to finalize revision of the 1991 *Guidelines on the Protection of Refugee Women*.
- States, HCR and other partners to ensure that a gender-equity perspective is incorporated into all training programs.
- States, HCR and other relevant actors to adopt measures to prevent and respond to sexual and gender-based violence. These should include a complaints mechanism and staff accountability framework, which should be part of all programs in all refugee settings.
- HCR and its partners to establish clear accountability structures and to ensure that applicable codes of conduct are respected in all humanitarian operations.

Imparting a sense of immediacy to the topic **protecting refugee children**, a 17-year-old refugee girl urged the gathering to ensure that refugee children can enjoy the right to return to their

homes and the right to adequate housing and education once they get there. "For us," she said, "repatriation with dignity and honor means that we are consulted before a rehabilitation plan is executed. I will feel let down if, after repatriation, I find myself in another transit camp." Participants later agreed that essential guidelines and standards on protecting refugee children—and women—already exist, but they are not adequately implemented. To improve protection for refugee children:

■ States, HCR and NGO partners to ensure that refugee children participate equitably in all areas of refugee life.

■ States that have not already done so to consider ratifying the Convention on the Rights of the Child and its Optional Protocol.

■ States, HCR and humanitarian partners to establish or continue programs that inform refugee children about their rights and encourage their participation in identifying protection problems and the actions needed to resolve those problems.

■ HCR to strengthen its partnership with UNICEF and Save the Children to improve training and capacity-building.

■ States, HCR and other partners to conduct training on preventing the military recruitment of children among refugee populations.

■ States to take concrete measures to reduce the risk of and/or prevent the forcible recruitment of refugees, especially refugee children, by, among other measures, ensuring access to education and vocational training.

■ States, UNICEF and other actors to set up programs to disarm, demobilize and reintegrate child soldiers who are among refugee populations.

Participants agreed on several other practical steps concerning asylum procedures, registration and

documentation, voluntary repatriation and efforts to combat human smuggling and trafficking that could improve protection of both women and children.

For all background papers and a complete summary of this Third Track meeting, click on Global Consultations at HCR's web site (www.unhcr.org).

"We need to know how much our government is willing to spend on making spaces habitable for children and adults. Basic rights like availability of drinking water in our homes, food security and improvement in living standards...go hand-in-hand with our dignity as bona fide citizens."

-Ganga, a 17-year-old girl who has been a refugee since the age of 6, speaking about refugee children's rights in an address to the Third Track meeting

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"As you know, the Agenda [for Protection] is not a legally binding text. At the same time, once it is finalized, this document--reflecting the outcome of an intensive, two-year process of Global Consultations--must not be allowed to remain unimplemented. You can expect from me, and I would like to expect from you, a firm commitment to use and implement the Agenda."

- High Commissioner Ruud Lubbers in his address to the 24th Meeting of the Standing Committee, 24 June 2002, in Geneva