



UNHCR Recommendations for the Ministerial Conference of the Euro-African Process on Migration and Development (Paris, 20-21 October 2008)

Introduction

The Declaration of the Euro-African Ministerial Conference on Migration and Development adopted in Rabat on 11 July 2006 (Rabat Declaration) committed participating States, in managing migratory flows, to "... work together following a comprehensive, balanced, pragmatic and operational approach and respecting the rights and dignity of migrants and refugees ...". The Declaration also refers to the "need to provide adequate international protection in accordance with the international obligations of the partner countries."

UNHCR has welcomed the Euro-African process on Migration and Development as an opportunity to develop further a comprehensive strategy on migration and development in the Africa – Europe region. The Office is actively following preparations for the next Ministerial Conference to be held in Paris on 20 and 21 October 2008. The discussions during the three preparatory expert seminars offered occasions for wide-ranging discussion of various aspects of migration within and across the two continents, including considerations with respect to refugee protection. These discussions will continue at the Conference itself.

This paper contains UNHCR's key recommendations in the three areas on which the process focuses: legal migration, irregular migration and migration and development. It is based on UNHCR's principal paper on this subject entitled "Refugee protection and durable solutions in the context of international migration", dated 19 November 2007, in which the Office outlines the interrelationship between refugee protection and international migration.¹ UNHCR looks forward to working with States and other actors with a view to ensuring that its recommendations are reflected in the final document to be adopted by the Ministerial Conference in Paris.

¹ UNHCR, *Refugee protection and durable solutions in the context of international migration*, Discussion paper, UNHCR/DPC/2007/Doc. 02, 19 November 2007, available at <http://www.unhcr.org/protect/PROTECTION/4742a6b72.pdf>.

UNHCR's interest in the topic

UNHCR is not a migration management agency. Its mandate is to provide protection and solutions for refugees, stateless persons and others of concern to the Office. However, patterns of human mobility are complex, and cross-border movements often include refugees and others in need of international protection. These are people who have been forced to flee and cannot return to their countries of origin, because they fear persecution or are threatened with other serious violations of their human rights.

Refugees enjoy a distinct status under international law. Refugee rights and States' responsibilities for their protection are governed by international law, most notably the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (1951 Convention). In Africa, the 1951 Convention is complemented by the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. UNHCR welcomes comprehensive migration policy approaches which recognize that refugees and other people in need of international protection may travel within broader migratory movements. Such comprehensive approaches take account of the special protection needs of refugees and ensure that they have access to procedures whereby these needs can be identified and met.

In 2006, UNHCR developed a Ten Point Action Plan on Refugee Protection and Mixed Migration,² which offers suggestions for the development of such comprehensive and protection-sensitive approaches. The Plan was first presented by the United Nations High Commissioner for Refugees at the Rabat Conference in July 2006.

The contributions UNHCR can make to the international migration debate were broadly acknowledged in December 2007, during the High Commissioner's Dialogue on Protection Challenges, a forum for exchange of views among States and civil society actors. Participants drew attention to the direct relevance of the areas covered in the Ten Point Plan of Action for a more protection sensitive approach to international migration.

Recommendation:

The Final Document to be adopted by Ministers should:

- Acknowledge the presence of persons in need of international protection within broader migratory flows, and recognize that coherent and comprehensive approaches to migration and development need to address the situation of people who have been compelled to leave their countries because of armed conflict and human rights violations;
- Acknowledge the specific rights of refugees.

1. Legal Migration

One of the areas under discussion at the Conference will be the opening of legal migration opportunities between the countries participating in the Euro-African process. The working group on this topic which took place on 3 and 4 March 2008 has elaborated a number of recommendations for the Conference. While labour migration as

² UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, Rev.1, January 2007, available at <http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>.

such is not a topic which falls into UNHCR's area of expertise, there are two aspects of the topic relating to refugees which in the view of the Office should be reflected in the recommendations.

First, the creation of legal migration opportunities may have a positive impact on the integrity of a country's asylum system. In UNHCR's experience, the availability of a variety of different legal migration opportunities may, depending on the particular situation (labour demands, policies etc.), help to diminish pressure on asylum systems and reduce its use by non-refugees for immigration purposes.

Secondly, migration instruments may offer interim or lasting solutions for refugees and other persons in need of international protection. Some refugees may have particular integration opportunities in the host country, based on regional or national migration law instruments in view of their nationality, family links or specific skills. This should be explored without prejudice to their specific rights as refugees. The right of citizens of ECOWAS Member States to legal residence and a work permit in another ECOWAS Member State is but one such example which may benefit refugees. UNHCR welcomes that the working group on migration and development which met from 9-11 July 2008 in Dakar specifically recommended to extend to refugees and asylum-seekers the benefits of the ECOWAS protocols on free movement.

Some refugees, especially those with specific skills, may also meet the criteria of legal migration schemes between their host country and a third (destination) country. Such possibilities could offer a complementary durable solution to some refugees.

Recommendation:

The Conference could:

- Recognize that the establishment of legal migration channels can help to reduce pressure on asylum systems of destination countries;
- Encourage participating States to extend to refugees the benefit of legal migration and integration opportunities based on national, regional or bilateral migration instruments, without prejudice to the specific rights of refugees;
- Endorse the working group's recommendation to "enlarge the new approach and extend the ECOWAS Protocols on free movement to refugees and asylum-seekers taking into account the 1951 Geneva Convention".

2. Addressing irregular migration

Addressing irregular migration should start with tackling the root causes. These include *inter alia*, a lack of economic development, conflict, persecution and human rights violations. Tackling the root causes is often complex and requires long-term engagement; nevertheless it must form an integral part of any action plan. Only an improvement of the situation which gives rise to such movements will diminish the necessity for people to migrate at all costs, including by irregular means.

States have adopted wide-ranging measures to manage entry to their territory. UNHCR encourages States to ensure that such measures are "protection sensitive": that is, that they do not prevent asylum-seekers, refugees and other persons in need of international

protection from reaching safety, being protected against *refoulement* and accessing the asylum procedure. Furthermore, a protection-sensitive entry procedure is considerate of persons with specific needs.³ Addressing irregular migration solely through law enforcement approaches risks neglecting the specific protection needs of such persons.

The human rights of all people on the move, regardless of their reasons for moving, should be respected. Irregular migration is, however, frequently facilitated by human smugglers and traffickers. Persons often travel under inhumane conditions with immense risks to their lives, as demonstrated by frequent reports of persons abused by smugglers and who lose their lives at sea or on land.

States must take more vigorous action against smugglers and traffickers who are responsible for human rights abuses. It is also vital to ensure the establishment of procedures for rescue at sea, notably in regard to responsibilities for disembarkation, and the humane and dignified reception of persons rescued or intercepted at sea or at border points.

Human trafficking and smuggling are serious (international) crimes and must be brought to justice. The victims of such crimes, however, often need protection and must be exempted from criminal sanctions. This principle is also reflected in the Protocols on smuggling and human trafficking to the 2000 UN Convention against Transnational Organized Crime.⁴ The 1951 Convention acknowledges the specific difficulties refugees may have to acquire the documentation necessary in order to reach a country of asylum. Article 31(1) of the 1951 Convention specifies that Contracting States shall not impose penalties on refugees on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Information campaigns warning about the risks of irregular migration, smuggling and trafficking and providing information about legal migration options may help to reduce irregular movements and the risks to human life this often entails.

Recommendation:

The Conference could:

- Strengthen efforts to address the root causes of migration and refugee movements, in particular through economic development, conflict resolution and peace-building actions, by enhancing the protection of human rights and the rule of law;
- Call on States to protect the human rights of all people on the move;
- Recommend that border and migration control measures are sensitive to the needs of persons seeking international protection and request States to develop mechanisms for the identification and referral of refugees and other people with specific needs in the context of mixed migratory flows, in order to address their needs for protection;

³ Persons with “specific needs” (also referred to as “vulnerable persons”) could include for example unaccompanied and separated children, victims of trafficking, elderly persons, women-at-risk, and persons with physical and mental disabilities.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, available at <http://www.unhcr.org/refworld/docid/4720706c0.html>, and the Protocol against the Smuggling of Migrants by Land, Sea or Air, supplementing the United Nations Convention against Transnational Organized Crime, available at <http://www.unhcr.org/refworld/docid/479dee062.html>.

- Strengthen efforts to combat human smuggling and trafficking, including by ratifying relevant international instruments (including the Protocols to the UN Convention against Transnational Organized Crime);
- Ensure protection and non-prosecution of the victims of trafficking and smuggling;
- Develop information campaigns which explain the dangers of irregular migration and inform about legal migration options.

3. Migration and Development

With regard to the third topic the Conference will discuss, UNHCR would like to draw attention to two aspects which relate to the search for durable solutions for refugees.

Refugees can become agents of development if they are provided with an opportunity to make use of their skills and productive capacities. Host countries are therefore encouraged to ensure that refugees are enabled to participate in national labour markets and to engage in income-generating activities. Providing refugees with proper documentation and recognition of their qualifications will help to make this possible. At the same time, UNHCR encourages the international community to extend development assistance to refugee-populated areas and to ensure that such areas are incorporated in national development plans.

Large-scale repatriation movements present the international community with both challenges and opportunities in the areas of development and peace-building. In order to capitalize on these opportunities, States should give sustained support to the return and reintegration of refugees and internally displaced persons, including efforts to promote new livelihoods, to rebuild shattered infrastructure and to foster harmonious social relations amongst different groups of citizens. The development community should be involved in planning for return and reintegration and examine ways of ensuring that short-term humanitarian aid is linked more effectively to longer-term development initiatives in areas where refugees and displaced people are to return.

Recommendation:

The Conference is urged to:

- Encourage host States to help refugees to achieve self-reliance, especially through granting them access to the labour market, and to develop and support durable solutions for refugees;
- Encourage donors to include refugee-hosting and returnee areas in development assistance programmes, to facilitate integration and reintegration and to help the local communities.