

Refugee protection and international migration in West Africa

Statement by the Assistant High Commissioner – Protection, UNHCR Regional Conference on Refugee Protection and International Migration in West Africa Dakar, 13-14 November 2008

A. INTRODUCTION

Excellencies, ladies and gentlemen

I would like to join with the previous speakers in welcoming you to Senegal and expressing appreciation for your attendance. It is a particular pleasure for UNHCR to be co-hosting this important Conference with IOM and ECOWAS.

ECOWAS is a highly valued partner. A robust and effective regional actor, its range of activities is truly impressive, from conflict avoidance to emergency response and peacekeeping where conflict could not be averted. Ahead of many other regional organizations, ECOWAS has recognized the strong links between social and economic integration and regional security and, with social cohesion as the objective, has undertaken some key initiatives in the area of free movement of people.

The increasingly ‘mixed’ nature of migratory movements, that is of movements whose participants have differing motivations, objectives and needs, necessarily means that refugees and migrants will often be travelling together. It also means that UNHCR must continue to intensify its cooperation with IOM in an expanding number of theatres. It is an honour and pleasure to have IOM’s new Director General, Ambassador William Lacy Swing, at this Conference and it serves as testimony to the commitment of both our agencies to work together in addressing challenges of mixed movements, and in particular as they confront this region.

A third partner with whom we closely co-operated in the preparation of the conference is the Office of the High Commissioner for Human Rights. Not least because of the variety of challenges to human rights protection identified in the background paper we are very pleased to have them at our side.

I should like also to acknowledge, with gratitude, the strong participation of civil society here in the Conference. NGOs, together with local and regional organizations, are increasingly taking on activities which used to be, to a great extent, the responsibility of international actors. There is a solid focus on seeking to ensure greater local ownership of and accountability for humanitarian and development activities in the region. I sincerely hope that civil society actors will be present in force during the discussions over the next two days, but also when it comes to the Conference follow-up.

The agenda of the meeting takes close account of migratory pressures in the ECOWAS region and where and how refugee movements intersect. All efforts have been made to put the concerns of governments in the region at the heart of the agenda. There is quite a body of

thinking concerning migratory movements from West Africa, to North Africa and, especially, to Europe. Where this Conference is different is that its principal focus, unambiguously and unapologetically, is on people movements within West Africa, which are of an order ten times more significant. Determining how to respond more effectively to these movements and in particular discerning and assisting persons in need of protection - whether from persecution or conflict in their home countries, or from other violations of human rights such as trafficking - is the purpose of the Conference.

To set UNHCR's interests into their proper context, let me first explain our mandate and role when it comes to mixed movements.

B. UNHCR AND MIXED MOVEMENTS

UNHCR is not a migration management agency and does not seek to become one. Nevertheless, and especially over the last several years, UNHCR has increasingly been drawn into discussions on international migration where refugee protection issues have been one component. The nature of modern migratory movements is such that very often migrants and refugees travel side by side, using the same routes and means of transport, even engaging the services of the same smugglers. Movements are also composed of individuals in both categories whose motivations for moving are mixed. A Somali from the South Central part of the country may seek to go to Yemen in the hope of obtaining a job, or avoiding drought, but she is most likely also, given the situation in her country and in spite of these motivations, a refugee. That is a person, who by definition is in need of international protection.

Obviously, not all movements everywhere are the same. The considerable majority of individuals crossing the Gulf of Aden are in need of international protection (two thirds are Somalis, most from South Central Somalia, the remainder Ethiopian, many of whom have good grounds for fearing persecution). The nature of migration out of West Africa is very different. A much smaller proportion of individuals are refugees.

There is always a difficult balance to achieve in the discourse on international migration. The distinctive status, rights and obligations of refugees have to be brought out and properly reflected in tandem with the recognition that, while persons who are not refugees are to be treated humanely and with dignity, this is essentially an issue of good migration management, which is not within UNHCR's mandate.

In seeking to discharge what clearly is within our mandate, the protection and assistance of refugees, UNHCR has consistently sought to ensure that the challenge of "mixed" movements, even where the "mix" of refugees is very small, is not reduced simply to issues of control or containment.

As a contribution to promotion of inclusion of refugee protection considerations into migration strategies, UNHCR developed its 10-Point Plan of Action. With this tool having been available for two years, we are currently engaged in an evaluation of the Plan's contributions. The feedback to date via our network of field offices has been optimistic on the 10-Point Plan's utility and future promise. Enhanced strategic planning, advocacy, partnering and response strategies have all direct products of its use.

The collaborative approach underpinning the Plan has been catalytic to more coordinated responses to mixed migration in a range of mixed migratory situations, including in North

Africa and the Gulf of Aden. With refugee protection as a modest and manageable component within a broader comprehensive framework, the 10-Point Plan has led to improvements to the registration, documentation and RSD practices in a number of countries. This has resulted not only in greater RSD capacity, whether governmental or UNHCR-led, but improved data collection and better, more fraud-resistant refugee documentation. We are hence very pleased that ECOWAS' Plan of Action for the Common Approach on Migration well integrates the 10 Point Plan.

C. CONFERENCE THEME I – ECOWAS AND SOLUTIONS

This brings me to some of the expectations we have for this Conference.

With funding generously provided by the European Commission, a series of regional conferences has been organized, structured around the 10-Point Plan. The conferences seek to encourage the development of collaborative regional strategies, action plans and projects.

The first of these Conferences was held in Sana'a, Yemen, in May 2008 and focused on the Gulf of Aden. The protection challenges in that movement, as in the region generally, are varied and significant. The Conference brought together approximately 180 participants from, respectively, Yemen, the three territories of Somalia, Djibouti, Ethiopia and, significantly, the countries of the Arabian Gulf, as well as regional organizations and donors. Focusing on immediately implementable outcomes, participants agreed on core elements of a regional strategy. The possibility of additional funding from new sources was broached and closer dialogue between all countries concerned in one way or another with the migration and refugee phenomenon was institutionalized.

The second of the regional series is here in Dakar with funding received from three different partners. Additional to the European Commission, the Government of the United States, and the Organization Internationale de la Francophonie have contributed. This is concrete evidence of the interest in the topic.

The author of the background paper for the Conference, Marion Fresia, will set out in detail later this morning the nature and challenges of movements in the region as she sees them. She speaks as an independent expert in her own capacity, not as UNHCR staff member. I am sure she will challenge us all, UNHCR included, to test our parameters for the discussion and revisit some of our assumption. We in turn should challenge her conclusions to the point where we find common ground. For the purposes of my introductory comments, let me flag only some of the parameters UNHCR regards as necessarily framing a collective response to the issues on our agenda.

The number of people leaving the region is modest.

The ECOWAS region is a very interesting one from the perspective of the 10 Point Plan. It is a mixed movement region, but the dynamics of these movements should not be seen as unduly concerning. Even if in absolute terms more migrants may be leaving West Africa irregularly than previously was the case, the numbers are still small. They are, in fact, as I have already pointed out, much less significant than the migratory movements within the region. West Africa is also receiving refugees and migrants from other regions of Africa and the wider world. While a number of these individuals come with the intention of moving on, there are still many who hope to stay. Amongst them are refugees.

However, the number of individuals with international protection needs is relatively speaking also modest.

The massive displacements due to the conflicts of the 1990s have given way to increased stability throughout the region. Notwithstanding continuing difficulties in several countries, only a comparatively small proportion of individuals moving between West African States demonstrate protection needs. There are refugees coming to West Africa from other regions of Africa, or beyond, but even then the numbers are quite modest.

These dynamics have enabled the countries in the region to work with very promising management tools, such as

The ECOWAS Treaty and Protocols which provide a range of options for refugees as well as migrants in the region:

ECOWAS citizenship and a variety of residency statuses, of the sort advocated generally in the 10-Point Plan. UNHCR is particularly excited about the opportunities for refugees seriously opening up in the ECOWAS region.

One is alternative statuses for refugees who have developed close links with their host population and may wish to preserve this relationship. Residual, or remaining, refugee populations quite often share ethnic, linguistic, cultural or other affinities with their hosts. They may have intermarried. The ECOWAS free movement protocols provide a solid, legal basis for such ongoing stay – one no longer predicated on a refugee identity as such. Individuals are enabled to re-avail themselves of the protection of their countries of origin without necessarily having to return to those countries, through recognition of the reciprocal nature of the entitlements and obligations covered by the regime of the Protocols and equality of treatment for refugees from the region with other ECOWAS citizens when it comes to free movement, right of residence and establishment.

The ECOWAS-inspired initiative for transitioning Sierra Leonean refugees, whose status as refugee will cease as of 31 December 2008, to a secure alternative legal status with work and residence entitlements, is an interesting special application of the general principle. The particular mechanisms for achieving this transition vary from country to country. The one employed in Sierra Leone will be described in detail in a Working Group later today. In Nigeria, a multipartite agreement between the Nigerian Government, Sierra Leone, Liberia, UNHCR and ECOWAS sets out the undertakings of the respective parties and establishes clear lines of responsibility. The approaches in Liberia, Cote d'Ivoire, The Gambia and Guinea are different again. All merit review.

The initiative is equally sensitive to the interests of migrants as of refugees, as the entitlement to claim the rights in the protocols is based on citizenship of countries within ECOWAS. From a formal and legal point of view, this model has much to recommend it, and its replication in other countries of the region is something we are advocating.

There are though still outstanding questions to think through. A particular area for careful reflection is the work and residence requirements. This has been recognized by ECOWAS, and indeed UNHCR and IOM, as a priority. The ambition is admirable, ie that all citizens of ECOWAS states willing and able to work will be entitled to do so in any other ECOWAS

Member State, provided they possess a valid travel document and an international health certificate.

This being said, what constitutes a valid travel document is not defined. Does, for example, a consular card suffice? The protocols are silent on the issue of fees. Ought fees to be charged for work and residence entitlements? If so, at what level should they be set so as to be affordable and thus sustainable for the concerned individuals? What protections could be introduced to ensure inadmissibility provisions are not used to undercut free movement rights? How can these be harmonized between states?

We recognise that these are not simple questions. We are interested though in how they will be answered. While the issues they centre on are not refugee-specific, they do impact refugees in very particular ways. We hope this Conference will bring greater clarification to these and other areas of uncertainty.

D. CONFERENCE THEME II - REFUGEE STATUS DETERMINATION (RSD)

The ECOWAS free movement protocols are not refugee instruments, even if they are exceedingly important in opening up solutions for refugees from the region who reside in the region. A broader question for the Conference will be if and how the regime of these instruments might be brought to bear also on the plight of refugees in the region not from ECOWAS States.

The ECOWAS instruments cannot of course and are not meant in any way to supplant the international refugee regime. The region is not only evolving as a migration space, but also one of protection for a range of vulnerable individuals. UNHCR's expertise, and indeed our 10-Point Plan, has a direct relevance here in supporting governments in their efforts to receive new arrivals, determine who they are and what their protection needs, if any, might be.

It advocates a number of measures, beginning at the border, with entry systems. Irregular movements, border violations, and abusive applications are undeniably elements of the phenomenon of international migration. Often, however, these elements achieve a disproportionate character in the attitude for States, tending to bias the responses towards containing a threat. This is irrational and unhelpful, as it obscures the possibilities and opportunities. Good border management ensures that controls are tempered by mechanisms allowing international protection needs to be identified and addressed. Irregular movement needs to be understood in this context - of increasingly difficult regular travel, especially for refugees. It is important that refugees' entitlement to be exempt from prosecution for unauthorized movement be preserved. Unfounded applications for asylum need to be responded to in a way that increases governments' capacity to contain such applications and deal with rejected applicants.

The Plan also has a particular focus on professionalising the refugee status determination process. In many aspects of RSD, West Africa serves as a "good practice" when compared to other regions with pronounced migratory flows. In all ECOWAS countries, governments have accepted their responsibility for RSD. In most States, national refugee laws exist and mechanisms for the determination of claims have been elaborated. UNHCR plays an observer and support role, rather than an adjudicative one.

There are, though, still issues to consider. In many countries, the process for dealing with claims entails long delays. There is often a lack of appeal mechanisms, or at least ones independent of the first instance decision-maker. In some countries, particularly where secondary movers are concerned, there are questionable bars to accessing the system. Asylum-seekers in some countries are denied substantive consideration of their claim for reasons which take inadequate account of the well-foundedness of making the claim. In some countries, acceptance rates are low, even for populations from known refugee-producing areas. We hope this Conference will promote a more in-depth look at such problems, where they exist, and will give the necessary encouragement for remedying them.

E. CONFERENCE THEME III - TRAFFICKING

A particular protection challenge for the region, and one identified in the background paper as a key priority for this Conference is human trafficking.

Trafficking is a highly exploitative, psychologically damaging and physically threatening human rights abuse. It occurs within countries, for example from rural areas to towns or cities. It takes place between countries in a single region. And it takes place from one region to another.

With the greater vulnerability inherent in their dependency, children, particularly refugee and displaced children are especially at risk of being trafficked. Hence our direct interest in anti-trafficking programs with a child focus being developed in this region. At least two countries, Cote d'Ivoire and Mali, have put in place a bilateral framework agreement to help prevent child trafficking. I look forward to hearing more about these specific efforts later on in the Conference.

At this point, I simply observe that, collectively, there is a need to do more. The 2006 *Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children*, endorsed by both the African Union and the European Union, sets out a variety of concrete anti-trafficking measures. It commits states to activities ranging from awareness-raising to cooperation in criminal prosecutions. How to implement these activities is the collaborative challenge.

UNHCR has a role here, not only to ensure that refugees and other persons under our mandate are not doubly victimized by traffickers, but also to ensure that access to asylum systems and refugee protection and solutions are available for victims of trafficking who qualify for refugee status. We will support the efforts of governments in the region and of our UN and other partners - in particular, IOM, UNODC, UNICEF and OHCHR - to build a more robust and reliable regional response to incidents of human trafficking.

In conclusion, the ECOWAS Treaty and Protocols, and other regional plans of action, together with regional and international refugee and human rights law, provide a solid framework for protection sensitive management of the many dilemmas inherent in mixed population movements to and through the region. The response gaps, both for refugees as well as for migrants, do not relate to a lack of standards. It is their implementation which needs now to be strengthened.

Different participants will obviously have various priorities for this meeting. Ours are three:

- to support the fuller implementation of the ECOWAS free movement protocols in furtherance of sustainable local solutions for refugees from and in the region
- to assist governments in expanding their capacity to do timely and accurate refugee status determination, and
- to work with governments, UN and other agencies to improve the regional response to trafficking, in particular to diminish the risk of refugees becoming victims of human trafficking and to ensure access to asylum where appropriate for persons trafficked or at risk of trafficking

This Conference will make a most useful contribution, in our view, should each working group identify practical actions that can be pursued so that implementation of the framework is now concretely advanced.