Return arrangements for non-refugees and alternative migration options

CHAPTER 9

Contents

Introduction

An effective migration management system provides outcomes for all persons travelling within mixed movements, including non-refugees (hereafter referred to as "persons who are not refugees"). This group includes persons found not to be in need of international protection and without compelling humanitarian reasons to stay in the host country ("unsuccessful asylum-seekers") as well as persons who have never sought asylum. Persons who have withdrawn their asylum claims and who wish to return to their countries of origin also fall into this group.

Providing effective and efficient outcomes to persons who are not refugees is essential to maintain credible asylum systems and prevent irregular onward movement. Demonstrating that misuse of the asylum system cannot function as a "back door" alternative to regular migration also serves as a strategy to deter irregular migration and to reduce incentives for human smuggling and trafficking.

The 10-Point Plan proposes two options for persons who are not refugees: return to the country of origin or access to alternative legal migration options (i.e. regularization in the host country or legal onward movement to another country). Since the latter option is generally only available to individuals with a specific profile or in specific circumstances, the focus of this Chapter is on return. Nonetheless, some practical examples of alternative migration options are also provided. Additional examples of alternative migration options are provided in Chapter 7.

Sustainability of return is best guaranteed if individuals who do not have a right to stay in a host country return home voluntarily. Voluntariness ensures that the return takes place in a safe and dignified manner. It is also cost-effective for the returning State. Several countries have developed good practices to encourage and support voluntary and sustainable return. These include: the provision of information and counselling on return options and circumstances in the countries of origin; the granting of reintegration assistance; and post-return monitoring. Some countries have also established initiatives to ensure that the specific needs of groups, such as unaccompanied/separated children, people with disabilities, and others, are addressed during the return process.

IOM is a particularly important actor with regard to the voluntary return and reintegration of migrants. IOM has assisted many governments in establishing return migration programmes and has helped persons return home in an orderly and humane manner. Other organizations have also provided support and assistance for certain voluntary return operations. Although persons who are not refugees generally fall outside UNHCR's mandate, on a number of occasions the Office has positively responded to requests for assistance from States, and it has recognized the impact of return policies and practices on the international refugee protection system.

While separate considerations apply to the repatriation of refugees (as outlined further in Chapter 7), as well as to the return of refugees and asylum-seekers to a first country of asylum (as outlined further in Chapter 8), some of the general aspects of return management that are outlined in this Chapter are relevant to all return movements. Of particular importance is the need to prevent *refoulement* and to promote voluntary, humane, dignified and sustainable returns.[1]

---

1   The practical examples contained in this Chapter include recommendations made at the 10-Point Plan Expert Roundtable No. 3: "The Return of Non-Refugees and Alternative Migration Options," held in Geneva, Switzerland, 30 November - 01 December, 2009. The recommendations made at the roundtable as well as other related document are available at: http://www.unhcr.org/4b9f99f7148.html.

Operationalizing the return of persons who are not refugees and alternative migration options: Suggestions for stakeholders and support UNHCR can provide to partners

Suggestions for stakeholders

- Promote voluntary and sustainable return, and develop information campaigns and awareness-raising strategies to inform potential returnees of all available options, as well as the circumstances in countries of origin and the dangers of irregular movements.

- Foster partnerships with key actors, and create appropriate referral mechanisms.

- Train authorities and civil society actors on how to ensure humane and dignified returns in accordance with human rights standards.

- Conduct risk assessments, where relevant, prior to return to identify international protection needs and ensure respect for the principle of *non-refoulement*.

- Engage in return counselling, tailor responses to meet specific needs of returnees during and after the return process, and provide post-return monitoring.

- Facilitate voluntary return for those wishing to return to their countries of origin.

- Encourage the participation of returnees in reintegration plans, and monitor reintegration activities that benefit the individual and the community in the country of origin.

- Promote cooperation between host countries and countries of origin with regard to return and reintegration.

- Raise awareness of regular migration options based on existing migration frameworks, including regularization or legal onward movement, and explore the establishment of new programmes.

Support UNHCR can provide to partners

- Support appropriate outcomes for persons who are not refugees in order to create protection space for refugees.

- Support States in their efforts to return persons who are not refugees, provided the Office's involvement is fully consistent with its humanitarian mandate to protect persons in need of international protection. UNHCR's involvement may be particularly useful to promote and support sustainable returns in the following areas: the return of stateless persons; return to post-conflict situations; and the return of persons with specific needs.

- Assist the returning country to verify that returnees do not have international protection needs, and take a clear public position on the acceptability of return in appropriate circumstances.

- Inform, where and when appropriate, asylum-seekers of return options during the asylum procedure, and refer rejected asylum-seekers to relevant actors such as IOM.

- Provide information on the country of origin, and facilitate access to travel documentation.

- Lobby for funding to allow IOM and other partners to establish or broaden their assisted voluntary return and reintegration (AVRR) programmes.

- Develop collaborative strategies with key actors to assist and protect persons with specific needs (e.g. trafficked persons and unaccompanied and separated children).

- Negotiate for the inclusion of protection provisions in bilateral and multilateral readmission agreements.

- Establish post-return monitoring mechanisms in coordination with key actors to identify protection needs in countries of origin, and monitor the reintegration of persons with specific needs, especially persons from minority groups.

9.1. Return

9.1.1. Respecting the principle of non-refoulement in the return process and ensuring return in safety and with dignity

Asylum procedures are the primary mechanism to ensure that individuals are not returned to situations where they face a risk of persecution or other irreparable harm. However, some individuals in the return procedure may not have had access to asylum procedures or, if they have, new risks may have developed in the country of origin. It is therefore important that the return process include safeguards to ensure respect for the principle of *non-refoulement*. States have adopted two different approaches for assessing new or unexamined risks: either re-referral to the asylum procedure; or through the establishment of a separate process for the examination of these risks as part of the return procedure (as illustrated in the first example in this Chapter, Canada: Pre-Removal Risk Assessment). Concerns that some returnees might abuse such a process in order to prolong their stay are best addressed through efficient procedural and case management mechanisms (as outlined further in Chapter 6).

CANADA: PRE-REMOVAL RISK ASSESSMENT (PRRA)
2001 – PRESENT

A. Background and Rationale

The Pre-Removal Risk Assessment (PRRA) programme evaluates risk assessment applications prior to the enforcement of removal orders. The PRRA seeks to uphold the principle of *non-refoulement* and to assess any risks associated with return to the country of origin. Two categories of persons are eligible to apply for a PRRA:

- asylum-seekers who were denied refugee status and who submit an application based on a change of circumstances; and

- claimants who request protection for the first time based on an alleged risk after receiving a removal order due to contravention of conditions of stay in Canada.

B. Actors

- 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 for a PRRA.

- The risks assessed during the PRRA include risk of persecution as defined in the 1951 Convention, risk of torture, risk to life or risk of being subjected to cruel and unusual treatment or punishment.

- To support PRRA applications, unsuccessful asylum-seekers may only present new evidence of risks that arose after their initial asylum hearing. Persons who have not previously sought asylum are not limited by this rule and may produce any documentation in support of their PRRA application.

- First-time PRRA applicants are not removed until completion of the risk assessment. Repeat PRRA applicants may be removed prior to a determination, but they are entitled to a visa to return to Canada if the application is ultimately successful.

- If the CIC considers that the applicant is at risk, s/he is entitled to a "protected person" status and, in most circumstances, eventually may apply for permanent residence.
- Where an individual is excludable under Article 1(F) of the 1951 Convention or for reasons of security or serious criminality, a positive determination results in a stay of removal.
- If the PRRA officer does not find an individual at risk, s/he is subject to removal; however, the individual can apply to the Federal Court of Canada for a judicial review.

D. Review

The PRRA, which is assessed by a different government entity than the one responsible for conducting returns, is an important procedural safeguard in the return procedure and helps ensure that the return process does not result in serious human rights violations. To improve consistency across regional PRRA offices, the CIC conducted a formative evaluation in 2008. The acceptance rate, however, is exceptionally low (below 5 per cent).

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

E. Further information

The outcome of the PRRA evaluation is available on the CIC website at: www.cic.gc.ca.

9.1.2. Training national authorities

Respect for the rights and human dignity of returnees during the return process can be challenging, particularly in the event of forced returns. Developing guidelines and training for law enforcement officials can promote a better understanding of applicable legal and policy standards as well as appropriate tools to handle difficult situations in a way that respects the rights and dignity of the returnees. Training can also equip national authorities to identify persons with specific needs and establish appropriate channels for referral. (See Chapters 3, 5 and 6.)

DENMARK AND EU MEMBER STATES: TRAINING NATIONAL POLICE ON RETURN OPERATIONS 2008 – 2009

A. Background and Rationale

This project of the Danish Refugee Council (DRC), The Danish National Police and The Dutch Council for Refugees aimed to develop the knowledge and capacity of certain EU national authorities responsible for preparing and implementing return operations. This project sought to ensure the sustainability of return by increasing voluntary returns, ensuring respect for the rights of returnees and emphasizing the human dignity of returnees in the return process.

B. Actors

- Danish National Police;
- DRC; and
- Dutch Council for Refugees.

- Conducted training for relevant police officials, based on a curriculum developed in cooperation with the DRC and Danish National Police;

- conducted a "training-of-trainers" (ToT) session on return issues and held an evaluation workshop to improve the training models; and

- developed international training materials and a report on best practices in preparing and implementing return operations, based on the training curriculum and hands-on experience whilst training the Danish National Police, and distributed these materials to all EU Member State authorities involved in return operations and to selected civil society organizations.

D. Review

The project addressed the need to develop the capacity of national authorities in EU Member States and to ensure the effective preparation and implementation of return operations, while respecting the human rights and dignity of returnees. The project and the training received positive responses, including from the Danish National Police. A second training session for new officers of the Danish National Police is planned.

E. Further information

Available on the DRC's website at: www.drc.dk.

9.1.3. Promoting and assisting voluntary and sustainable return

Voluntary return is generally more cost-effective and administratively less cumbersome than forced return for the returning country. Countries of origin also prefer voluntary return because it helps ensure that the rights of their nationals are respected and avoids the stigma of forced returns. Voluntary return can be promoted and supported in many ways, ranging from pre-return support to post-return monitoring. Among the activities that have proven particularly useful are:

- the establishment of appropriate referral mechanisms for agencies assisting with voluntary return in the host country;

- the provision of information and counselling on return options;

- the dissemination of accurate and up-to-date country of origin information; and

- the provision of reintegration assistance.

9.1.3.1. Comprehensive initiatives

IOM ASSISTED VOLUNTARY RETURN AND REINTEGRATION (AVRR) PROGRAMMES
1979 – PRESENT

A. Background and Rationale

AVRR is a well-established area of IOM expertise. Since 1979, IOM's AVRR activities have grown to include more than 100 projects, helping individuals to return to approximately 160 countries worldwide. In the past decade alone, IOM has assisted up to 3.5 million migrants to return voluntarily to their home countries.

AVRR Programmes aim to support the orderly, humane and cost-effective return and reintegration of migrants who are unable or unwilling to remain in their host countries and who wish to return voluntarily to their countries of origin. IOM implements AVRR from an ever-increasing number of host and transit countries and supports reintegration activities in many countries of origin. The conditions under which assistance is provided and the nature and extent of resources made available to return migrants and support their reintegration vary from country to country.

B. Actors

- IOM; as well as
- national counterparts and a network of partners both in host countries and countries of origin.

C. Actions

IOM AVRR activities are developed to respond to the specific humanitarian needs of migrants and to provide dignified and safe returns. Each AVRR Programme consists of three essential elements:

- pre-departure assistance;
- transportation assistance; and
- post-arrival assistance.

This assistance is provided to unsuccessful asylum-seekers, migrants in an irregular situation, migrants stranded in transit, stranded students and other persons in similar circumstances. IOM AVRR Programmes are either available to all migrants in an irregular situation in a particular country or tailored to the particular needs of particular groups, including migrants with specific needs (e.g. trafficked persons).

IOM assistance typically includes information dissemination on return possibilities, the provision of country of origin information, referral to available services, the arrangement of travel to the home location (including travel documentation and escorts) and limited support towards reinsertion in the country of origin. Assistance may also include profiling target groups and providing return information and counselling to potential returnees, as well as medical assistance, reception and longer-term reintegration assistance in order to facilitate sustainable returns (e.g. support for vocational training, income-generating activities, etc.).

Most of the IOM AVRR Programmes include an evaluation component. IOM also provides technical and other support to governments in order to improve the management of return caseloads and to facilitate return migration dialogue among countries of origin, transit and destination.

The "IOM Stories of Return" provide a snapshot of returnees who have agreed to share their experiences regarding return and reintegration assistance received through IOM AVRR Programmes.[2]

---

2 See, for instance, IOM, *Stories of Return: Iraq,* 2010, available at: http://www.iomlondon.org/doc/stories/Iraq%20SoRs%20Nov%202010.pdf.

D. Review

The AVRR Programmes adopt a cooperative approach through the engagement of countries of origin, transit and destination in order to establish partnerships to better manage returns within broader migration frameworks. The cooperation thus initiated in the context of voluntary return among the various parties constitutes a platform for discussion on, inter alia, possibilities to establish and facilitate legal migration channels. In doing so, it enhances the positive value of coordinated migration management, including voluntary return options.

The pre-departure, transportation and post-arrival components, coupled with reintegration assistance, contribute to the sustainability of returns, to the benefit of both migrants and States. IOM's experience also demonstrates that AVRR Programmes are more effective if information on voluntary return options is given to asylum-seekers at an early stage in the asylum procedure.

E. Further Information

For further information on AVRR Programmes and an overview of the specific country projects, see:
http://www.iom.int/jahia/Jahia/activities/by-theme/regulating-migration/return-assistance-migrants-governments.
Note: The IOM Global Assistance Fund (GAF) is a global referral, assessment and rapid assistance mechanism for the return and/or reintegration of stranded trafficked persons who are unable to access, or are not otherwise eligible for, assistance under existing AVRR Programmes and/or reintegration assistance programmes.

Morocco:
IOM/UNHCR Referral for the Return of Unsuccessful Asylum-seekers 2008 – Present

UNHCR-Morocco systematically refers rejected asylum-seekers to the IOM programme "Assisted Voluntary Return and Reintegration of irregular migrants in Morocco to their countries of origin" (AVRR Programme) for assistance. Asylum-seekers who no longer wish to pursue their asylum claims and who choose to return voluntarily to their countries of origin are also referred to IOM.

In July and August 2009, an IOM evaluation was conducted for 41 returnees in Guinea, Senegal and Congo-Brazzaville. The findings revealed that 76 per cent of the returns had proven sustainable and 88 per cent of the beneficiaries expressed their intention to remain at home following their successful reintegration.

Annex 1 – IOM, Programme de retour volontaire assisté de migrants en situation irrégulière au Maroc et de réinsertion dans leur pays d'origine, Avril 2010 (French only)[3]

---

3   UNHCR and IOM have submitted a two-year, joint project to the Spanish Development Cooperation to support the establishment of a comprehensive migration management strategy and an asylum capacity-building programme.

The European Red Cross Return Initiative (ERCRI) issued a study, the results of which offer a best practice model for return arrangements. This study also provided the ICRC and IFRC, as well as governments and EU institutions, with recommendations to develop the capacities of National Red Cross and Red Crescent Societies with regard to return, to enhance coordination of return activities and to complement return management activities implemented by EU Member States and other key actors.

Annex 2 – ERCRI, *A study on how to support sustainable return in safety and dignity*, 2009

9.1.3.2. Access to return information and provision of country of origin information

Comprehensive information packages and counselling, which include return information, ensure that persons are aware of their options and can make informed decisions. As outlined in Chapter 4, it is important that such information be provided as early as possible after arrival. However, ongoing access to return information throughout various procedures is also essential, as it may encourage persons who are at other stages of the procedure and who lack the possibility to legalize their stay to return. To avoid any ambiguity, return information provided to asylum-seekers generally clearly states that those in need of international protection will have the opportunity to seek and be granted asylum.

After the decision to return has been taken, the continual provision of up-to-date country of origin information, including information on socio-economic conditions, will help the individual to prepare for his/her return and reintegration. Participation by returnees in reintegration planning can ensure that assistance is tailored to specific needs and skills.

**Europe: The IRRiCO Project
"Information on Return and Reintegration in Countries of Origin"
2007 – Present**

The IRRiCO Project, entitled "Information on Return and Reintegration in Countries of Origin", which was initiated by IOM in 2007, developed a joint approach for gathering, consolidating and sharing information on countries of origin in order to ensure that migrants were provided with reliable, up-to-date information on return and reintegration possibilities as well as on the socio-economic conditions in the country of origin.

Under the IRRiCO II Project, entitled the "Enhanced and integrated approach regarding information on return and reintegration in countries of origin", country factsheets provide a general overview of the situation in a specific country of origin as well as a list of contact details for relevant organizations and service providers. Return and reintegration information is stored in a database, which facilitates the exchange of individual queries between IOM offices. Communication strategies were developed focusing on the diaspora of returnees in selected host countries. Outreach activities in host countries inform migrants and return counsellors of return options, and information sessions, leaflets and posters are provided in various languages. The public website of the project provides easy access to information on return and reintegration possibilities in nearly 20 countries.

Annex 3 – IOM, Practical Guide on Information Provision Regarding Return and Reintegration in Countries of Origin, 2010

Further information is available at: http://irrico.belgium.iom.int.

Europe: The Country of Return Information (CRI) Project
2009 – 2010

A network of European NGOs and grassroots organizations in selected countries of origin launched the Country of Return Information (CRI) Project in order to collect information on selected countries of origin as well as on reintegration possibilities in the countries. The purpose of the project was to facilitate the provision of information to migrants, refugees and asylum-seekers.

Information is accessible through country reports, country factsheets and presentations. Advice on return is provided through an information helpdesk. As a follow-up to the project, the Flemish Refugee Council in Belgium implemented a national return information project entitled "CRI-Belgium" in cooperation with Caritas International. The information provided through the CRI Project is drawn from a wide variety of sources, and the research methodology ranges from general to applied research (academic articles to empirical studies) collected by a variety of actors (national and sub-national actors in countries of origin and countries of destination).

Annex 4 – Henau, S., *An Issues Handbook: The Case of the "Country of Return Information and Vulnerable Groups Project"*, CRI Project, 2009

Further information is available at: http://www.cri-project.eu.

Germany: The Information Centre for Voluntary Return (ZIRF)
2006 – Present

The Information Centre for Voluntary Return (ZIRF) was developed in mid-2003 by the Federal Office for Migration and Refugees in Germany. ZIRF provides relevant information to returnees and federal authorities on voluntary return and assistance programmes, as well as counselling possibilities throughout Germany and contacts for relevant agencies involved in the return process.

ZIRF maintains an extensive collection of up-to-date and relevant information on assisted returns, conditions in countries of origin and transit, as well as integration in Germany. An expert forum consisting of judges, academics, lawyers and NGOs analyses the collated information and provides advice and guidance on asylum, refugee protection and migration. Country factsheets on the general situation in countries of origin, including health care, the labour market and housing, are prepared and made available to a wide audience. ZIRF answers inquiries from counselling agencies and public authorities on available return options, and individual queries are collected in the ZIRF database, which is available on the website of the Federal Office for Migration and Refugees.

Annex 5 – German Federal Office for Migration and Refugees, Information Note on the Information Centre for Voluntary Return (ZIRF), 2009

9.1.3.3. Cooperation between host countries and countries of origin

Cooperation between a host State and the country of origin can help ensure that return takes place in an orderly, dignified and predictable manner. The return of persons who are not refugees is on the agenda of many regional consultative processes (as outlined in Chapter 1). Cooperation could include assessing the impact of returns on the country of origin and providing financial support, including to local communities. States often formalize operational arrangements on return through bilateral readmission agreements. These accords are frequently coupled with development assistance and other financial support for countries of origin.

Indo-Chinese Comprehensive Plan of Action (CPA)
1988 – 1997

The return of persons who were not refugees was a crucial element of the Indo-Chinese Comprehensive Plan of Action (CPA). It helped strengthen the asylum process and identify appropriate outcomes for these individuals in accordance with international standards.

The MOU signed between UNHCR and Vietnam facilitated the repatriation and readmission of Vietnamese nationals without international protection needs. IOM conducted medical screening, provided transportation assistance and facilitated the return of migrants to their countries of origin in a safe and orderly manner.

See Chapter 1 for further details on the CPA.

IOM "CLUSTER INITIATIVE" BETWEEN COUNTRIES IN WESTERN EUROPE AND THE SOUTH CAUCASUS
2001 – PRESENT

A. Background and Rationale

IOM promotes regional processes among countries of origin, transit and destination. An example is the bilateral "cluster initiative" for countries of the South Caucasus and those in Western Europe. The cluster 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 in the South Caucasus (Armenia, Azerbaijan and Georgia);
- Countries of destination in Western Europe (Belgium, Denmark, Germany, the Netherlands, Sweden and Switzerland); and
- IOM.

C. Actions

The first phase of the cluster initiative began in the period 2001-2002. The purpose of this early phase of the process was to:

- increase effective cooperation on the return of unsuccessful asylum-seekers and migrants in an irregular situation;
- facilitate the voluntary return and reintegration of returnees through capacity building in countries of origin; and
- establish mechanisms to prevent irregular migration, including information campaigns in the South Caucasus.

The second phase of the initiative, in place since 2006, focuses on discussions regarding opening regular migration channels (including labour migration schemes). The purpose of the second phase is to develop an integrated approach to:

- promote legal migration through national capacity building and inter-regional dialogue;
- establish migration resource centres as a basis for outreach and information dissemination about foreign and domestic employment and living and working conditions abroad, as well as the provision of legal counselling to targeted groups;
- enable Migration Resource Centres and local actors to conduct baseline and follow-up surveys and studies on regular and irregular migration flows and reintegration possibilities;
- enhance the labour migration management skills of government officials and private sector representatives by conducting training workshops based on international standards; and
- develop activities for the promotion of the employment of workers nationally and abroad, and prevent recruitment abuse.

D. Review

The cluster initiative provides a forum to facilitate technical cooperation among migration management 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 facilitate coordination with European counterparts and to disseminate information and provide counselling to returnees. The cluster process has strengthened the benefits of existing inter-regional migration and asylum management dialogues between the origin and transit countries of the South Caucasus and receiving EU Member States, as well as non-EU Member States (e.g. Switzerland).

GEORGIA: ENHANCED RETURN TO GEORGIA OPERATIONALLY (ERGO)
2009 – 2011

A. Background and Rationale

Several Member States of the EU are negotiating readmission agreements with Georgia. The Enhanced Return to Georgia Operationally (ERGO) Project ("the ERGO Project") seeks to support Georgia in developing mechanisms for dignified and sustainable returns and reintegration, whether spontaneously or on the basis of readmission agreements.[4]

B. Actors

- Danish Refugee Council (DRC);
- International Centre for Migration Policy Development (ICMPD);
- Government of Georgia (Ministry of Refugees and Accommodation, Ministry of Foreign Affairs, Ministry of Interior, Civil Registry Agency of the Ministry of Justice);
- Georgian Young Lawyers' Association; and
- Participating EU Member States, namely Poland and the Netherlands.

UNHCR and the Citizenship and Migration Board of Estonia are associates in the project.

C. Actions

The ERGO Project consists of two main components.

- Support for the development of model readmission and reintegration mechanisms to improve bilateral cooperation between the competent authorities in Georgia and each of the participating EU Member States:
  - establish a network of focal points to enhance knowledge on respective working methods;
  - ensure a rights-based approach to return and reintegration; and
  - monitor each return case under established readmission agreements and conduct joint assessments with the view to drafting a manual on good practices and policy options.

- Support for the practical implementation of the readmission and reintegration policies and procedures:
  - conduct capacity-building trainings for government staff and local NGOs;
  - create a working group comprised of Georgian Government institutions, NGOs, international organizations and Georgian academics to explore reintegration assistance for potential returnees;
  - develop information services for Georgians currently residing in the EU;
  - gather and disseminate up-to-date information on return options, rights of returnees, readmission, and reintegration in countries of origin to potential returnees;

---

4   See also the Bilateral Cooperation between the Czech Republic and Georgia, which offers opportunities for unsuccessful asylum-seekers, irregular migrants and stranded migrants returning to Georgia, including: projects implemented by IOM on assisted voluntary returns (AVR); legal migration opportunities and campaigns informing on the dangers of irregular migration; and reintegration assistance to returnees in the form of job counseling, referral to service providers, vocational training, job placement and small business development. Further information is available at: http://www.iom.int/jahia/Jahia/activities/regulating-migration/return-assistance-migrants-governments/georgian-migrants.

- create a tailored "reintegration assistance package" consisting of free legal aid, psychosocial support and counselling for returnees;
- undertake information campaigns to increase knowledge of return options and decrease the stigma associated with returnees; and
- develop a returnee assistance manual for government agencies.

D. Review

The ERGO Project adopted an integrated and rights-based approach in order to assist the Georgian Government with reintegration procedures and to provide assistance to returnees with the support of civil society actors. The programme is still in the implementation phase. It is envisaged that the project will contribute to the negotiation and practical implementation of readmission policies and procedures by establishing sustainable working relations between each participating EU Member State and the Georgian Government. The ERGO Project will be assessed on a regular basis during implementation, and the practical toolkit developed under the project will serve as a model to assist the Georgian Government and create support mechanisms for the successful reintegration of returnees.

E. Further Information

Available at:
http://www.icmpd.org/692.html?&no_cache=1&tx_icmpd_pi1[article]=1387&tx_icmpd_pi1[page]=1389.

TRIPARTITE AGREEMENT ON THE RETURN OF UNSUCCESSFUL ASYLUM-SEEKERS FROM SWITZERLAND TO SRI LANKA
1994 – 1996

A. Background and Rationale

Based on a bilateral agreement signed between the Governments of Switzerland and Sri Lanka, a tripartite agreement was concluded in February 1994 with UNHCR for the return of unsuccessful asylum-seekers from Switzerland to Sri Lanka during the period 1994–1996.

B. Actors

- Government of Sri Lanka;
- Government of Switzerland; and
- UNHCR.

C. Actions

The tripartite agreement included the following elements:

- reiteration of the principle of safety and dignity in return;
- financial assistance provided by the Swiss Government to returnees;
- issuance of valid travel documents to all returnees prior to departure as well as necessary residence documents upon return;
- implementation of a phased return process;
- assurance that returnees would not be forced to return to areas with mines;

- possibility for returnees to reside in temporary holding centres in Sri Lanka, administered by the Sri Lankan Red Cross; and
- UNHCR as a liaison between the returnees and the two governments, responsible for addressing problems encountered by returnees upon request and, to this end, also for facilitating agreement between the two governments to share information and cooperate with UNHCR.

D. Review

The tripartite agreement facilitated the systematic and orderly return of a manageable number of individuals, rather than sudden and large-scale returns. Swiss NGOs acknowledged the benefits of UNHCR involvement in the overall protection framework, particularly with regard to deportation practices. In Sri Lanka, the tripartite agreement facilitated the favourable treatment of returnees in that it guaranteed the retention, or acquisition, of necessary personal documents and it obviated earlier concerns about prolonged detention on arrival. Ad hoc monitoring by UNHCR contributed to improving reintegration prospects and the psychological well-being of the returnees. However, the monitoring mechanisms were criticized for not being sufficiently effective. Only a limited number of Sri Lankan nationals were returned on the basis of the agreement and there were a few cases of involuntary returns.

E. Further Information

Annex 6 – Agreement between Switzerland and Sri Lanka on the return of Sri Lankan nationals who have been rejected under the procedures relating to the grant of asylum in Switzerland, 1994

Information on Readmission Agreements

Information on readmission agreements is available on the database of the Return Migration to the Maghreb (MIREM) Project of the European University Institute. The database provides an inventory of bilateral agreements concluded by each of the 27 Member States of the EU over the last decade.

For further details, see:
http://www.mirem.eu/datasets/agreements/.

See also Council of Europe, Parliamentary Assembly, Readmission Agreements: a Mechanism for Returning Irregular Migrants, 2010, available at:
http://www.unhcr.org/refworld/docid/4bdadc1c3.html.

9.1.3.4. Counselling on return options

Counselling on return is needed at different stages: upon arrival in the host country, during immigration procedures or the asylum procedure, and after a return or removal order has been issued. This requires enhanced cooperation between asylum authorities, civil society actors and key agencies that specialize in return procedures.

SWITZERLAND:
RETURN COUNSELLING AND ASSISTANCE FOR UNSUCCESSFUL ASYLUM-SEEKERS
1996 – PRESENT

A. Background and Rationale

The Swiss Federal Office for Migration and Refugees initiated a comprehensive programme to facilitate the voluntary return of unsuccessful asylum-seekers and to provide them with reintegration assistance.

The programme aims to:

• ensure better migration management at the international level;

• promote orderly, voluntary and cost-effective returns and reduce the need for forced returns at the federal level; and

• encourage countries of origin to readmit their nationals and to improve conditions for sustainable reintegration.

An essential element of the programme is the provision of return counselling and assistance at the federal and local canton levels.

B. Actors

• International organizations, most notably IOM;

• local NGOs;

• Swiss Cantons;

• the Swiss Federal Office for Migration and Refugees (BAMF) and other federal bodies in Switzerland; and

• the Swiss REPAT-IOM Movement (SIM).

C. Actions

• The BAMF implements government-run return counselling and assistance for voluntary returns from Switzerland.

• The SIM provides transport services, medical escorts and reception in the country of origin.

• The IOM Office in Bern is tasked with setting up return counselling offices in the Swiss Cantons to provide comprehensive information on return and available assistance to rejected asylum-seekers who may wish to voluntarily return to their countries of origin.

• The Return Information Fund (RIF), established by IOM in 2002, provides the BAMF and return counsellors in the Swiss Cantons and in asylum reception centres with adequate and timely return information to support voluntary return and reintegration based on socio-economic circumstances in selected countries of origin.

- Local NGOs (e.g. the Swiss Red Cross) have implemented pilot projects to encourage more Swiss Cantons to open their return counselling and assistance mechanisms to persons in irregular situations and to monitor the return of rejected asylum-seekers and migrants, regardless of their status.

D. Review

Counselling has become an important component of the comprehensive return and reintegration assistance programme in Switzerland. Counsellors in Swiss Cantons and asylum reception centres are confronted with an increased number of complex cases concerning persons with specific needs. They also require detailed information on the situation in the country of origin. IOM-Bern collects accurate and up-to-date return information through a network of IOM field offices and their local partners in countries of origin. This information is made available to counsellors to inform potential return-ees of return options and reintegration opportunities. Since the establishment of the RIF Project, around 2,800 individual queries concerning 70 countries of origin have been answered. The RIF Project enables the BAMF to better prepare, organize and support returns and to use counsellors to transfer information to potential returnees. In some cases, a reintegration stipend is provided to returnees based on the information collected through the RIF Project.

E. Further Information

Available (in German) at: http://www.ch.iom.int/programme/rif.html.

9.1.4. Reintegration assistance

Reintegration assistance that is tailored to the individual's profile and the country situation, including social and economic circumstances, contributes to the sustainability of return. Reintegration assistance can include vocational training, skills training, education grants, assistance with small-business schemes and loans for business/micro-enterprise development. Vocational training programmes and grants for business/micro-enterprise development in the country of origin have been generally more successful than lump-sum payments. Good results have been achieved where assistance is offered to both the individual and the community to which s/he is returning.

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

A. Background and Rationale

The project, entitled "Towards an Integrated Return: Case-Chain Management", aims to promote the sustainability of both the voluntary and the mandatory return of persons to their respective home countries. It seeks to enhance cooperation between Germany, Sweden and the Netherlands and to establish networks of institutions to assist in the return process. A training component ensures that case managers have the necessary skills and expertise to assist returnees in the development of reintegration plans.

B. Actors

Institutions in host countries in Germany, Sweden, and the Netherlands:

- Arbeitsgruppe Entwicklung und Fachkräfte im Bereich der Migration und Entwicklungszusammenarbeit, Germany (AGEF);
- Centraal Orgaan opvang asielzoekers, the Netherlands (COA);
- Municipality of Munich, Amt für Wohnen und Migration, Germany (Coming Home);
- Goeteborg Initiativet, Sweden; and
- HIT Foundation, the Netherlands.

Partner institutions in selected countries of return (namely Afghanistan, Iraq, Kosovo).

C. Actions

- Returnees receive counselling regarding their options in the home country, including economic and social possibilities.
- Counsellors in Germany, Sweden and the Netherlands share individual case details with counsellors in home countries through an internet-supported database.
- Upon return to the home country, returnees are provided with employment services, on-the-job training, and employment-promotion packages.
- After their business plans are approved, returnees receive financial support for a specific period of time.
- A training project ensures that counsellors from participating institutions 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 persons 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 reintegration. However, it could benefit from greater consideration of the social and psychological aspects of the reintegration process, such as discrimination against returnees by receiving communities.

E. Further Information

Available at: www.ccm-training.net.

9.1.5. Return of persons with specific needs who are not refugees

Persons with specific needs may require targeted assistance during return and reintegration. In some cases, the availability of such arrangements may determine whether or not the individual can be asked to return to his/her country of origin. With regard to the return of unaccompanied/separated children, for example, the appointment of a guardian in the host country, consultations with a guardian or a legal representative in the country of origin, as well as family reunification or placement in foster care in the country of origin need to be arranged prior to return. Trafficked persons found not to be in need of international protection may continue to require medical and psychological attention and specific reintegration support to ensure that they are not re-trafficked. Where stateless persons are allowed to return to their countries of habitual residence, reintegration assistance may be required along with awareness raising about the specific protection needs of stateless persons.

WEST AFRICA: PROGRAMME FOR THE PROTECTION AND REINSERTION OF UNACCOMPANIED AND SEPARATED CHILDREN 2005 – 2011

A. Background and Rationale

In 2005, the Swiss Foundation of the International Social Services launched a programme in West Africa (PAO-Programme Afrique de l'Ouest) in cooperation with IOM to enhance the protection, return and reintegration of unaccompanied and separated children (UASC). The long-term goal of this programme is the establishment of a regional network of protection for UASC in West Africa with harmonized, common procedures and methodology of intervention.

B. Actors

• Swiss Foundation of the International Social Services (ISS);
• International Institute for the Rights of the Child;
• NGOs working for child protection in participating countries;
• ministries in charge of child protection in the participating countries;
• international agencies (namely ILO, IOM, UNHCR, UNICEF);
• independent experts and local partners;
• a network of child-friendly journalists in Africa and Switzerland;
• Reseau d'Actopm Fode et Yaguine RAFY;
• participating countries (as at August 2010) (namely Benin, Burkina Faso, Gambia, Ghana, Guinea-Bissau, Guinea-Conakry, Côte d'Ivoire, Mali, Niger, Senegal and Togo); and
• countries still to join [namely Nigeria (end 2010), Benin (2011), Ghana (2011), Togo (2011)].

C. Actions

• Develop a transnational network for child protection that includes government authorities, NGOs and international organizations;
• promote the conclusion of bilateral agreements to combat child trafficking from West Africa and to facilitate cooperation and information exchange;
• identify focal points in each country to act as case managers, and mobilize national networks to work closely with the transnational social network;
• create and reinforce the use of shelters and orientation centres in countries of origin, and build the capacities of local partners;
• participate in the identification of children wishing to return to their home countries and facilitate voluntary returns;
• conduct "best interests" determinations and facilitate the participation of the UASC in reintegration plans in line with their age and maturity;
• assess the family situation of each UASC, plan long-term outcomes, and appoint a legal guardian and reference person prior to return; and
• develop social and professional projects to reintegrate 2,000 UASC (including child victims of trafficking), and follow up on reintegration activities.

D. Review

This programme adopts an innovative transnational and collaborative approach to support UASC in West Africa. It involves the active, multi-level involvement of various actors at national and transnational levels and builds synergies between participating countries in order to create sustainable outcomes for children on the move. The programme has contributed to the reduction of the number of UASC from West Africa in Europe. More than 1,100 children have been reintegrated into their communities through the reinforcement of existing structures and with the assistance of local partners. As a result, communities are more aware of the hazards faced by children during clandestine migration, including the high risk of exploitation by traffickers and smugglers.

E. Further Information

Available at: www.ssiss.ch.

INDIA: REHABILITATION AND SOCIAL REINTEGRATION OF TRAFFICKED PERSONS – NGO-CORPORATE SECTOR PARTNERSHIP MODEL
2005 – PRESENT

A. Background and Rationale

This project was designed to complement the efforts of the Government and civil society to fill existing gaps in the rehabilitation process for trafficked persons in India. The project is based on the principle of social responsibility and aims to develop a system which involves multiple stakeholders, including local NGOs, the private sector, training institutions, and government bodies, to increase sustainable economic opportunities for trafficked persons.

B. Actors

- Department of Women Development and Child Welfare, Government of Andhra Pradesh;
- Gujarat Co-operative Milk Marketing Federation (GCMMF), AMUL, a dairy cooperative in India;
- Prajwala "Eternal Flame of Hope"; and
- victims of trafficking.

C. Actions

- IOM and Prajwala jointly identify trafficked persons who are willing to participate as beneficiaries in the project.
- Prajwala has developed a comprehensive training module for victims of trafficking, based on their specific needs and aptitudes.
- AMUL has extended franchise options to set up 50 dedicated AMUL Pizza Parlours across India for trafficked persons and offers technical and logistics support, marketing training, as well as start-up machinery at a minimal cost.
- Prajwala provides shelter and counselling to trafficked persons and engages in advocacy and networking to find suitable locations to set up AMUL Pizza Parlours for the beneficiaries of the project.

- The Department of Women Development and Child Welfare of the Government of Andhra have provided two locations at a low cost for the establishment of two AMUL Pizza Parlours, and IOM has provided the initial capital to set up the parlours.
- IOM has supported the evolving capacity-building training module on life skills and entrepreneurial skills for managers of the parlours, and identified beneficiaries were sent to Ahmedabad for a 15-day, on-the-job training programme in existing AMUL Pizza Parlours in Gujarat.

D. Review

The project helped develop the social and economic skills of trafficked persons and helped them adjust to mainstream work culture. As a result of advocacy and networking under the project, other private sector actors in India have contributed to livelihood initiatives for trafficked persons to assist with their reintegration back into society. The NGO-corporate sector partnership is seen as model for involving the private sector to help with the rehabilitation and reintegration of trafficked persons.

One of the AMUL Pizza Parlours has been running successfully for the past five years. It is self-sustaining and provides livelihood to eight women and partially supports a children's home run by Prajwala. The other AMUL Pizza Parlour had to close down due to community concerns based on negative perceptions of trafficked persons.

E. Further Information

Annex 7 – Centre for Child Rights (HAQ), *Compendium of Best Practices on Anti-Trafficking by Non-Governmental Organizations*, UNODC, Government of India, 2008

Vietnam: Reintegration Network to Strengthen the Return and Reintegration of Women and Children Victims of Trafficking 2007 – Present

The Reintegration Network is a voluntary alliance comprised of local and international organizations. Its objective is to strengthen the return and reintegration of women and children who have been victims of trafficking in Vietnam and to improve the coordination of referrals and reintegration assistance provided to returnees. The inter-agency communication channels have enhanced the exchange of information related to services and assistance provided to returned trafficked persons, and training of government officials has raised awareness about their needs. Government agencies have been actively involved in the dissemination of reintegration information and in the development of practical guidance tools to help trafficked persons rebuild their lives and reintegrate into their communities in Vietnam.

Annex 8 – Vietnamese Ministry of Labor, Invalid and Social Affairs, Department of Social Evil Prevention, *Policies and Regulations on Social Assistance Services for Returned Women and Children-Victims of Human Trafficking*, 2008

Guidelines in Central America on return of children have been adopted at both regional and national levels in some Central America countries to ensure that the specific needs of trafficked children are taken into account prior to and during the return process:

• *Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking, Assistance to Unaccompanied Children in Cases of Repatriation of Child Victims of Trafficking*, Regional Conference on Migration, Central America, 2007;

• *National Protocol on the Repatriation of Child and Adolescent Victims of Human Trafficking*, Costa Rica, 2007; and

• *Regional Guidelines for the Assistance to Unaccompanied Children in Cases of Repatriation*, Regional Conference on Migration, Guatemala City, 2009.

Further information available at: http://www.unhcr.org/4bfbe2ad9.html

For further details on child protection systems, see Chapter 6.

**IOM Handbook
on Organizing the Return and Reintegration of Vulnerable Persons**

The IOM Handbook on Organizing the Return and Reintegration of Vulnerable Persons was prepared by IOM-Bern in 2007 upon request from the Swiss Federal Office for Migration for Swiss social workers, return counsellors and other actors dealing with return assistance. In particular, it addresses some practical issues relating to the return and reintegration of persons with specific needs, such as elderly persons, persons with medical needs, trafficked persons and unaccompanied minors.

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

9.1.6. Post-return monitoring

Independent monitoring during the post-return phase ensures that returnees are not subject to protection risks upon return to their countries of origin and that they can access reintegration services. Protection concerns can relate to the security and/or reintegration prospects of returnees, particularly where the overall situation in the country or the circumstances for specific individuals and groups (e.g. ethnic minorities, unaccompanied and/or separated children, and trafficked persons) remains fragile. Monitoring activities build confidence among returnees and encourage voluntary return. They can also help identify and address shortcomings in the return process.

BELARUS, MOLDOVA, RUSSIAN FEDERATION AND UKRAINE: MONITORING SAFE AND DIGNIFIED RETURNS AND CONDITIONS OF DETENTION
2009 – 2010

A. Background and Rationale

The programme on monitoring safe and dignified returns and conditions of detention in Belarus, Moldova, the Russian Federation and Ukraine provides capacity building to NGOs to enable them to carry out the independent monitoring of border facilities and return cases and to provide legal counselling to assist those migrants with specific needs and to prevent *refoulement*. It also aims to build the capacity of NGOs to provide training to local authorities involved in border management and refugee issues.

B. Actors

- IOM;
- Belarusian Movement for Medical Workers;
- Centre for Human Rights "Memorial", Migrant Rights Network in Russia;
- European Council on Refugees and Exiles (ECRE);
- Equilibre-Solidarity, Russia;
- Foundation on Naturalization and Human Rights "Assistance", Ukraine;
- Helsinki Committee of Human Rights, Moldova;
- Human Rights Have No Borders in Ukraine;
- Law Centre of Advocates, Moldova;
- NEEKA International Foundation for Health and Environment Protection "Region Karpat", Ukraine; and
- The Donetsk Fund for Social Protection and Mercy, Ukraine.

C. Actions

- Increase the capacity of partner NGOs to monitor situations at borders, interview persons who have been returned under readmission agreements or through voluntary, forced, or mandatory return, and provide individual legal counselling to prevent *refoulement*;
- provide technical support to, and train, border guards, and also promote cooperation between NGOs and local authorities;
- implement a pilot project to monitor returns from Chechnya at the international airport in Russia, as well as administrative deportations from Russia to former Soviet countries, Uzbekistan, China and Korea, and lobby for NGO access to airport transit zones;
- facilitate exchanges of good practices between NGOs along EU external borders, and engage with ECRE members experienced in border monitoring, airport monitoring projects and legal counselling in detention centres;
- facilitate the reporting of emergency cases, especially those involving "chain deportations" without protection safeguards;
- produce reports on return practices in the region to inform ECRE's advocacy work;

- conduct a regional conference on return to the Western New Independent States (NIS), asylum procedures at borders and relevant international instruments, and present the results of the NGO monitoring activities to stakeholders;
- develop a training course on refugee issues in Ukraine, the Russian Federation and Moldova; and
- conduct joint study trips to the EU for NGOs, journalists and government officials to learn about the treatment of nationals of Belarus, Moldova, the Russian Federation and Ukraine.

D. Review

Through the active involvement of NGOs in Belarus, Moldova, the Russian Federation and Ukraine, the project seeks to monitor return practices at borders and detention centres and to build the capacity of border authorities and civil society actors to facilitate safe and dignified returns. The cooperation between NGOs and government authorities promotes a "bottom-up" approach to inform migration and border policies. The project is still in the implementation phase, and it is too early to assess the impact of the monitoring activities.

KOSOVO AIRPORT: MONITORING FORCED RETURNS 1999 – PRESENT

A. Background and Rationale

With assistance from a partner agency, UNHCR has been monitoring forced returns from the Pristina International Airport since 1999. The monitoring project aims to gather data, monitor trends and identify potential protection gaps in relation to forced returns carried out under readmission agreements.

In 2006, UNHCR handed its monitoring role over entirely to its implementing partner, the Advocacy Training and Resource Center (ATRC) Airport Monitoring Team, which is based at the Pristina International Airport. The ATRC Airport Monitoring Team maintains close cooperation with all relevant actors at the airport, particularly with UNHCR, to ensure prompt interventions, as needed.

B. Actors

- ATRC Airport Monitoring Team; and
- UNHCR.

C. Actions

The activities of the ATRC Airport Monitoring Team include the following:
- Record and document the arrival of forced returns;
- monitor the arrival of returnees, and identify individuals of concern to UNHCR (e.g. persons with specific needs and members of ethnic minorities);
- monitor asylum-seekers arriving at the Pristina International Airport, and immediately notify UNHCR to ensure access to asylum procedures;
- respond to persons with specific needs by referring them to the appropriate international and local authorities;

- conduct interviews based on UNHCR's interview format and report to UNHCR on individual interviews and return statistics; and
- collect and provide data relating to ethnicity, place of origin, place of return (if different from place of origin), family composition and other relevant information necessary for UNHCR Field Offices to monitor the reintegration of returnees.

The activities of UNHCR include the following:
- Collate relevant data into a consolidated database for the purpose of analysing protection concerns as well as any trends and patterns;
- undertake routine protection monitoring through sample surveys, including participatory assessments of Age, Gender and Diversity Mainstreaming (AGDM) based on criteria related to security (e.g. acts of harassment, threats, physical assault), freedom of movement, access to public services (e.g. health, housing, education, utilities, issuance of documentation by administrative bodies), property restitution, further displacement in Kosovo or departure from Kosovo following return; and
- carry out protection and reintegration monitoring exercises.

D. Review

A permanent presence at the point of arrival coupled with close coordination with border officials enable the ATRC to effectively monitor the situation and to notify UNHCR immediately about any issues that arise as well as any protection risks. However, the Pristina International Airport is not the only site of forced returns. Consequently, monitoring is also needed at other border-crossing/entry points.

UNHCR and ATRC have established an information exchange network through cooperation with other actors, including IOM and the NGO community, facilitating cooperation among key partners.

E. Further Information

Annex 9 – ATRC and UNHCR, Forced Returns Interview Form, Minority Forced Returns from Third Countries (Serbs, Albanians in a minority situation, Romas, Ashkalis and Egyptians), 2010
See also Danish Refugee Council, *Recommendations for the Return and Reintegration of Rejected Asylum-seekers; Lessons Learned from Returns to Kosovo*, May 2008, available at: http://www.unhcr.org/refworld/docid/484022172.html.

9.2. Migration options as an alternative to return

Some persons who do not have international protection needs may be able to regularize their stay in the host country through possibilities provided by the country's migration laws, or to take advantage of opportunities to legally migrate onward to a third country. While Chapter 6 provides examples of migration processes and procedures to address specific needs, this Chapter presents examples of additional possibilities to regularize stay provided by some States.

9.2.1. Regularization

Regularization has become an important mechanism to address the situation of non-nationals in irregular status in certain host countries.

Regularization can be an ongoing process or a one-time opportunity. It can be granted on the basis of an individual assessment (as shown in the examples in Section 9.2.1.1) or on a group basis (as shown in the examples in Section 9.2.1.2). Individualized procedures generally leave a fairly large margin for discretion to competent authorities. Their objective is to enable authorities to take individual circumstances sufficiently into account when deciding on whether a person should be entitled to stay in the country.

By contrast, the principal objective of collective regularization processes is to reduce the number of individuals in irregular status and the size of the informal sector of the economy. Collective regularization procedures are generally based on objective and well-defined eligibility criteria.

Regularization can be beneficial for both the individual as well as the host country. It may prevent the marginalization and exploitation of individuals in an irregular situation, particularly those who cannot be removed from the territory for practical or humanitarian reasons. In addition, the host country usually benefits economically from regularizing its irregular labour force, as regularized migrants pay taxes and social contributions.

9.2.1.1. Individual procedures

**GERMANY: HARDSHIP COMMISSION
2004 – PRESENT**

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" made such a recommendation. The Hardship Commissions review applications received from unsuccessful asylum-seekers who claim that special hardship prevents them from returning to their countries of origin. This provides government authorities with the possibility to review and, if necessary, correct the refusal to issue a residence permit. By the end of 2006, all 16 German States had established independent Hardship Commissions.

B. Actors

- Government authorities of Federal States in Germany; and
- Hardship Commissions, composed of representatives of the regional authorities, the churches, civil society organizations and NGOs.

C. Actions

- Requests for consideration of a case may be directed to any member of the responsible Hardship Commission. The request must be accompanied by all facts and documents (e.g. CVs, medical reports, and commitment from a potential employer) which support the claim for continued residence in Germany.

- The foreigner must convince the Commission that his/her departure from Germany would present 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 not be subject to an extradition order. Some Hardship Commissions exclude applicants whose hardship situation is self-inflicted, if the person recently entered the country, or if the applicant was deported, returned or extradited prior to his/her application. A request to a Hardship Commission can be made only once.

- On average, the Hardship Commissions gave positive decisions in 61 per cent of all admissible individual requests. However, there are significant differences in the decision practices among the individual Hardship Commissions.

- Protection against deportation during the hardship procedure varies amongst Federal States. The statutes of most 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 Government authorities' discretion whether or not to follow a recommendation of the Hardship Commission. In 86 per cent of all petitions received from the Hardship Commissions, Government 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 school were decisive factors. Serious health problems and the need for medical and/or psychological treatment are generally not considered sufficient.

D. Review

The establishment of the Hardship Commissions allowed the Government authorities to consider individual circumstances and to 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 up until December 2008, the Hardship Commissions registered more than 4,000 requests for consideration throughout Germany. The majority of the applicants originated 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 expired on 31 December 2010 and subsequent regulation has not been discussed.

E. Further Information

Section 23a Residence Act is available at:
http://www.iuscomp.org/gla/statutes/AufenthG.htm.

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, available at:
http://www.im.nrw.de/aus/25.htm.

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

9.2.1.2. Collective regularization programmes

THAILAND: TEMPORARY REGULARIZATION PROGRAMME 2003 – PRESENT

A. Background and Rationale

Thailand receives a continuing influx of irregular arrivals from neighbouring countries. The largest 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. Thailand also provides temporary regularization programmes for undocumented labour migrants.

B. Actors

- Government of Laos PDR;
- Government of Myanmar;
- Royal Government of Cambodia; and
- Royal Thai Government.

C. Actions

- In 2003, Thailand signed a MOU on "Employment Cooperation" with the above-mentioned three countries and agreed on the temporary regularization of workers from these countries who were illegally present in Thailand upon completion of their services in Thailand. The agreement also offered legal migration opportunities to persons wanting to migrate to Thailand.
- In 2004, Thailand conducted a nationwide migrant registration campaign and authorized individuals and their families from these countries to stay and work in Thailand for a fixed period of time. Fifteen per cent of the wages of the workers were withheld and used to finance their return to their countries of origin.

D. Review

The temporary regularization initiative has regularized the presence of workers without status in Thailand (although domestic workers are excluded from this Agreement), thereby giving them more protection in accordance with labour standards. Thailand registered 1.3 million irregular workers during 2003–2004. However, employers in Thailand were permitted to retain the travel documents of Cambodian workers and 15 per cent of the workers' wages were withheld. According to the Thai Department of Labour, as of 12 May 2010, 932,255 undocumented persons had received proper travel and work documents, including 812,984 from Myanmar, 62,792 from Laos and 56,479 from Cambodia. The Government of Thailand is working to register an estimated two million persons.

E. Further Information

Available at: www.osce.org/item/14679.html.

Annex 10 – Thailand: Intergovernmental Cooperation on Temporary Migrants, Information note for the 13th Economic Forum, Prague 23 – 27 May 2005

Examples of Large-scale Regularization Programmes

In Argentina, a national migration law was adopted to grant residence status to irregular migrants. The National Programme for the Regularization of Migrants "Patria Grande" was subsequently launched as part of a comprehensive approach to address irregular migration and to facilitate the integration of migrants into society. In its first phase in 2005, residence status was granted to migrants who were not citizens of the Common Market of the South (MERCOSUR) and, in 2006, it facilitated the regularization of migrants from MERCOSUR and associated countries (which accounts for 90 per cent of all migrants in Argentina). Since the programme was launched, 800,000 migrants have regularized their status, thereby facilitating their social integration into Argentinean society. As a result, the number of undocumented migrants in the labour market has declined significantly and the unemployment rate has decreased to eight per cent.

In Brazil, the Government signed a mutual regularization agreement with Bolivia in 2008. In addition, the general amnesty on migration status initiated in 2009 granted resident permits to 27,000 Bolivians, the largest single group that applied for amnesty in Brazil. This initiative has had a strong impact on curbing forced labour due to irregular migratory status.

In Ecuador, the Government seeks to create legal options through the regularization process for third-country nationals present in Ecuador. A decree has been issued to enable the regularization of undocumented Peruvians in the southern part of the country.

In Mexico, the implementation of large regularization programmes resulted in the regularization of 15,000 undocumented migrants during the period 2002-2006. Most of these migrants are from Central America.

In Venezuela, the "Mission Identidad" (Identity Mission), implemented between 1998 and 2006, provided documentation to approximately 415,000 migrants who were not in possession of identity documents but who had been living in the country for many years.

USA and countries in Europe: The USA and a number of countries in Europe implement the largest regularization programmes. The regularization programmes carried out in the EU has provided nearly four million undocumented migrants with temporary or permanent residence and/or work permits.

For further information on regularization programmes, see: International Organization for Migration, *World Migration Report: Managing Labour Mobility in the Evolving Global Economy*, 2008, available at: http://www.iom.int.

See also the report of the Council of Europe's Parliamentary Assembly "Regularization Programmes for Irregular Migrants", available at: http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc07/EDOC11350.htm.

9.2.2. Legal migration alternatives

States have established various channels for legal migration in order to fulfill different purposes, such as meeting labour market needs, enabling family reunification, or pursuing study. The range of available options differs between countries. While some migration schemes are strictly temporary, requiring the individual to leave when his/her stay permit expires, others provide possibilities for permanent settlement upon arrival or after a certain period of stay. States may also give preferential access to admission, stay and residence to nationals of certain States based on bilateral agreements or cultural ties.

Access to most legal migration channels is generally not possible for persons in an irregular situation in the host country. Rather, migration channels tend to become available following return to countries of origin rather than as an alternative to return.

ILO Multilateral Framework on Labour Migration

The ILO Multilateral Framework on Labour Migration provides a comprehensive policy framework for governments, employers, worker organizations, and all those involved in the implementation and evaluation of national, regional and international labour migration policies and practices. It is a practical and user-friendly tool that contains non-binding principles, guidelines and a series of best practices on the implementation of a rights-based approach to labour migration.

Annex 11 – ILO, *ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a rights-based approach to labour migration*, 2006

Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements

The Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements, Global Forum on Migration and Development (GFMD), 2008 provides examples of labour migration agreements and good practices.

Annex 12 – GFMD, *Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements*, 2008

Selected References

Legal and Policy Documents

Amnesty International *et al., Common Principles on Removal of Irregular Migrants and Rejected Asylum-Seekers*, August 2005, available at:
http://www.unhcr.org/refworld/docid/437dd5304.html

Council of Europe, Committee of Ministers, *Twenty Guidelines on Forced Return*, 04 May 2005, available at:
http://www.unhcr.org/refworld/docid/42ef32984.html

Council of Europe's Parliamentary Assembly, *Regularization Programmes for Irregular Migrants*, 2007, available at:
http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11350.htm

Save the Children and the Separated Children in Europe Programme, *Position Paper on Return and Separated Children*, 2004, available at:
http://www.savethechildren.net/separated_children/publications/reports/return_paper_final.pdf

United Nations General Assembly, Resolution 45/90 of 14 December 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, available at:
http://www.unhcr.org/4b9fb1199.html

UNHCR, *Conclusion No. 96 (LIV) on the Return of Persons found not to be in need of International Protection*, 2003, available at:
http://www.unhcr.org/refworld/docid/3f93b1ca4.html

UNHCR, *Global Consultations on International Protection/Regional Meetings: Conclusions (Regional Meeting in Budapest, 06-07 June 2001), EC/GC/01/14*, 2001, available at:
http://www.unhcr.org/4b9faee19.html

UNHCR, *Standing Committee, Return of persons not in need of International Protection, EC/47/SC/CRP.28*, 1997, available at:
http://www.unhcr.org/refworld/docid/4a54bc260.html

UNHCR, *The Return of Persons found not to be in need of International Protection to their Countries of Origin: UNHCR's role*, Protection Policy Paper, 2010, available at:
http://www.unhcr.org/refworld/docid/4cea23c62.html

Literature

ECRE, *The Way Forward: Europe's Role in the Global Refugee Protection System. The Return of Asylum-Seekers whose Applications have been Rejected in Europe*, 2005, available at:
http://www.unhcr.org/refworld/docid/42ca7e044.html

IOM, *World Migration Report: Managing Labour Mobility in the Evolving Global Economy*, 2008.

Koser K., *The Return and Reintegration of Rejected Asylum-Seekers and Irregular Migrants – An Analysis of Government-Assisted Return Programmes in Selected European Countries*, IOM, 2001, available at:
http://www.unhcr.org/refworld/docid/415c6c0d4.html

Kraler, A., *Regularisation: A Misguided Option or Part and Parcel of a Comprehensive Policy Response to Irregular Migration?*, IMISCOE Working Paper No. 24, 2009, available at:
http://clandestino.eliamep.gr/wp-content/uploads/2009/07/wp24-regularisation1.pdf

Laczko.K., "Opening up Legal Channels for Temporary Migration: A Way to Reduce Human Smuggling?", *Journal of International Migration and Integration*, Vol. 5, No. 3, 2007, pp. 343-360.

Noll, G., "Rejected Asylum Seekers: The Problem of Return", *UNHCR New Issues in Refugee Research, Working Paper, No. 4*, 1999, available at:
http://www.unhcr.org/3ae6a0cd0.html

OECD, "Management of Low-Skilled Labour Migration" *in* OECD*, International Migration Outlook*, 2008.

UNHCR, *10-Point Plan Expert Round Table Nº 3: "The return of non-refugees and alternative migration options" (Geneva, Switzerland, 30 November - 1 December 2009) Summary Report*, December 2009, available at:
http://www.unhcr.org/refworld/docid/4ba9ddd22.html