

## **Return of Persons not in need of International Protection**

### **I. INTRODUCTION**

1. In 1990, the Executive Committee took note of the need for countries of origin to assume a significant responsibility in the search for appropriate solutions, including facilitating the return of their nationals who were not refugees. It also referred to the development of measures by States to deal responsibly and effectively with rejected asylum-seekers (A/AC.96/760, para.21 (a), (vi) and (xi)). In 1993, the Executive Committee recognized that in certain regions the arrival and presence of large numbers of asylum applicants with no valid claim to international protection created serious problems both for refugees and for the States concerned, by adversely affecting the institution of asylum, jeopardizing the effectiveness of national determination procedures, and preventing the prompt and effective protection of refugees (A/AC.96/821, para. 19 (j), reiterated in A/AC.96/839, para. 19(j)).

2. In 1995, the Executive Committee emphasized the need to address problems relating to the return of persons not in need of international protection, and encouraged UNHCR to cooperate with other international organizations in looking into ways in which the return process could be facilitated, and to inform the Standing Committee. (A/AC.96/860, para. 19(i)).

3. The purpose of the present Note is to provide a succinct overview of the issue of return of persons not in need of international protection and, in particular, of the role which UNHCR could possibly play in addressing this issue. This should be seen in the wider context of considering measures to ensure international protection to all who need it.

### **II. BACKGROUND**

4. The legal safeguards within refugee status determination procedures are also used by individuals who are not in need of international protection but wish to immigrate to other countries. The continued presence of such persons in countries of asylum can constitute an incentive for future would be immigrants; and can also directly affect the efficacy of the asylum process.

5. The presence of such groups and difficulties in dealing with them in an appropriate manner may have repercussions on the ability of other asylum-seekers to access the asylum procedure. This is the case where States, in lieu of actively pursuing comprehensive return policies, adopt measures to prevent asylum-seekers from entering the territory in the first place, or constraining their ability to apply for protection when they do enter.

6. A number of States experience little serious difficulty in removing or returning persons not in need of international protection, and undertake such action as a matter of routine. UNHCR recognizes that the problems encountered by other States in implementing removal decisions may contribute to the perception of misuse of asylum procedures. This was reflected in the 1990

Note on International Protection which observed that rejected cases created complex problems, particularly in States where for various reasons there were difficulties in deporting groups or categories within the rejected group, which in turn had worked to limit asylum options available for refugees.

7. In some cases, persons who are not in need of international protection can, nonetheless, not be returned to their country. Return may be impossible even for those who did not leave for refugee-related reasons. Countries of origin may refuse to readmit nationals who do not volunteer to return, or who do not apply for travel documents; in some cases, the authorities may deny that the individual is their national, a dispute which may be difficult to resolve. In some instances, whilst international refugee protection may not be necessary, return may nonetheless be inappropriate, or an action with which UNHCR cannot be associated.

8. The 1990 Note on International Protection stated that "UNHCR could, if so requested by the Secretary-General or the General Assembly, and in cooperation with other appropriate agencies, assume responsibilities outside his traditional mandate, but compatible with his strictly humanitarian competence, to coordinate the safe and dignified return of rejected asylum-seekers". Furthermore, in terms of preventive action and the promotion of comprehensive approaches, UNHCR has an interest in seeing this issue addressed in a manner compatible with humanitarian standards. The matter of UNHCR's competence is further addressed under Section V below.

### **III. DEFINITION**

9. The term "persons not in need of international protection" (also known in this context as "rejected asylum-seekers") is understood to mean persons who, after due consideration of their claims to asylum in fair procedures, are found not to qualify for refugee status on the basis of the criteria laid down in the 1951 Convention, nor to be in need of international protection on other grounds, and who are not authorized to stay in the country concerned for other compelling reasons. The term covers persons who attempt to migrate for economic or other personal reasons by using asylum procedures. It does not, for this purpose, include individuals who have been rejected in a refugee status determination procedure on purely formal grounds (for example pursuant to the application of the safe third country concept), or on substantive grounds with which UNHCR cannot concur (such as in case of persecution by non-State agents, civil war refugees or because of an unreasonably high burden of proof). In the absence of a proper examination of the substance of the claim in a fair asylum procedure, or when the rejection, following a substantive examination of the claim, is not in conformity with UNHCR's interpretation of the criteria of the refugee definition, such persons continue to be of concern to UNHCR.

### **IV. SCOPE OF THE PROBLEM**

10. A precise quantitative assessment of this problem is difficult due to the absence of accurate statistical data, as well as the lack of agreement concerning the definition of persons in need of international protection. Greater efforts are needed to reach a common understanding on the identification of those persons not in need of international protection, and in pursuing their return.

11. In this context, reference can be made to the Report of December 1995 on the Return of Rejected Asylum-Seekers in States on Europe, North America and Australia prepared by the Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies,

which presents -- for a limited number of countries -- an overview of State policies and practices with regard to return. The report leads to conclusions which confirm patterns and highlight common problems, solutions and trends in this area.

12. As noted, in a number of States rejected asylum-seekers are deported without difficulty, when their claims are clearly unfounded, their citizenship undisputed and their countries of origin agree to readmit them. Specific problems with readmission to countries of origin arise, however, particularly with undocumented rejectees or those who have been present in the asylum country for a substantial period of time.

13. One aspect of this problem is States which are unwilling to take their national back, while another element affecting a smaller number of individuals arises when the citizenship of the individual to be deported is unclear or disputed. In some instances, States have imposed administrative and procedural requirements aimed at preventing the return of their own nationals (for instance by refusing to issue travel documents or by delaying their issuance). This issue needs to be addressed in appropriate international fora, as well as on a bilateral basis. In some regions, financial resources are not available nor are local capacities adequately developed to ensure the implementation of proper return policies. Where nationality status is unclear, UNHCR has, where appropriate, assisted States in determining nationality status by reference to the State with which the individual may have the closest ties. More complex situations arise in countries of origin where there are doubts as to the safety of rejected cases upon return.

14. A careful analysis of the difficulties encountered by States in deporting groups or categories within the rejected group could be helpful. This may provide scope for preventive action, such as reduction of instances of statelessness or readmission of former nationals who have been permitted to renounce their citizenship without having acquired another.

## **V. LEGAL CONSIDERATIONS AND UNHCR'S MANDATE**

15. The General Assembly has underlined state responsibility as it relates to countries of origin, including facilitating the return of their national who are not refugees.<sup>1</sup>

16. States' obligations under general international law to re-admit their nationals is the corollary of the right of States to expel and deport foreign nationals under certain circumstances. States are, moreover, under an obligation to cooperate in resolving problems in connection with the return of their nationals.

17. Whilst the removal of rejected asylum-seekers remains within the exclusive domain of States (usually through enforcement of aliens' or immigration legislation), there is increasing international focus on the orderly return of non-refugees. Standards for the return of persons not in need of international protection can be found in international migration and human rights law. One such standard calls for the promotion of sound, equitable and humane conditions in connection with international migration (for example, by ensuring that the persons concerned are properly documented with valid travel documents). States should cooperate in the adoption of measures regarding the orderly return of migrants to their countries of origin, as outlined in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Likewise, the practical implementation of removal decisions has to be seen in the framework of international cooperation.

18. In terms of institutional responsibilities, rejected asylum-seekers as defined above do not, as a category, fall within UNHCR's competence. Any particular role for which UNHCR's involvement is sought must be compatible with the Office's specific humanitarian mandate. At the

same time, it is recognized that, in view of the present political and social climate, the successful management of refugee status determination procedures may also benefit from removal of those who do not satisfy the fate of rejected cases may prejudice those in need of international protection, by engendering negative public opinion or restrictive asylum policies and legislation.

19. UNHCR has, in a small number of cases, played a limited role in monitoring the treatment of rejected cases upon return, or in being available for the referral of problems encountered by individuals following such return.

20. For example, the novel feature of the Comprehensive Plan of Action (CPA) was the responsibility it vested in UNHCR to monitor in Viet Nam the situation of all those who went back, in order to assure their safety and create a climate of confidence. The CPA's success depended on a balanced implementation of all its aspects including that of the return and reintegration of persons determined not to be refugees. The protection and humanitarian considerations surrounding the issue of return argued strongly for the continued involvement of the United Nations in this area. The Secretary-General requested the High Commissioner, independently of his mandate and on an exceptional basis, to serve as his Special Representative to coordinate and monitor the returnee programme to Viet Nam. This was construed as an additional responsibility for UNHCR on a "good offices" basis, one which went beyond the mandate and was to last for a limited period.<sup>2</sup>

21. In 1994, Switzerland concluded an agreement with Sri Lanka concerning the return of persons not in need of international protection. At the request of the Swiss and Sri Lankan authorities, UNHCR undertook, on a "good offices" basis, what has become known as a "passive monitoring" role in Sri Lanka. This became possible due to a relative improvement in the overall human rights situation of Sri Lanka. A minimum of safeguards, such as the issuance of travel and identity documents for rejectees, were necessary conditions. UNHCR insisted also that return should only take place to areas not directly affected by armed conflict. In this context, it was agreed that UNHCR, together with the Swiss Embassy, would seek clarifications and/or would intervene with the competent authorities of Sri Lanka, in respect of a "rejectee" facing personal security problems.

22. In addition to these activities, UNHCR has also, either alone or in cooperation with the International Organization for Migration (IOM), launched targeted public information campaigns to dispel misinformation in countries of origin and to discourage irregular migratory movements of people not in need of international protection. Furthermore, UNHCR regularly provides country of origin information and advises, upon request, on the "returnability" of specific groups of rejectees to their countries of origin.

23. Under its mandate for the reduction of statelessness, UNHCR has engaged in dialogue with some countries to review their citizenship legislation, particularly if it allows renunciation of nationality without at the same time ensuring that the person in question has acquired another rejectees to their country of previous nationality.

## **VI. STRENGTHENING INTERNATIONAL COOPERATION IN THIS AREA**

24. The 1990 UNHCR Working Group on Solutions and Protection, in addition to nothing the financial burden imposed by manifestly unfounded claims, reaffirmed the principle of return, in safety and dignity and in an orderly manner, of persons determined not to be refugees, and of States' responsibility towards their own citizens. The Working Group noted the various return programmes offered by the IOM. It considered that while UNHCR should not be involved in enforcement of return decisions, it noted the suggestion that political dialogue between the countries of origin and receiving countries would be desirable and that such dialogue could be undertaken under the auspices of the United Nations or another international agency.<sup>3</sup>

25. Discussions in other international fora have generally illustrated a rather uncoordinated approach to the problems of the return of persons not in need of international protection. A more systematic assessment of the problems specific to a particular rejected caseload could be a useful step, and one which might facilitate the basis of any support which might be given by UNHCR, IOM, or other international organizations as appropriate. The key concern for UNHCR will, necessarily, lie in knowing that the rejection has taken place in accordance with protection standards promoted by UNHCR.

26. AN analysis encompassing the reasons for departure may often show a mixture of migration pressures and restrictions on the exercise of particular rights. The return of persons not in need of international protection is, therefore, closely linked with the development of comprehensive approaches. Indeed, aspects such as the flexible timing of returns, the psychological repercussions of delayed returns, and the problem of "brain drain" were all discussed by the 1990 Working Group. Significant return movements may put a considerable additional strain on already weak economic and social infrastructures, which may have a destabilizing effect. While signalling that certain of these issues were too broad to be dealt with by the Working Group, the Executive Committee's increased interest in pursuing comprehensive strategies could provide a basis for addressing return issues in a broader perspective.

27. Such a perspective might, from UNHCR's point of view, include returns that are carried out in full coordination with the country of origin; with respect for the dignity of the individual; in a phased manner which does not overwhelm the community of origin; therefore, UNHCR encourages the development international protection. An ongoing consultative process with interested States to determine which specific groups of rejected cases and countries of origin (perceived as main sources of problems) could be the subject of such a comprehensive approach would be helpful.

28. Furthermore, various international, governmental and non-governmental organizations carry out activities in this area. In Europe, for example, IOM operates some special assistance and counselling programmes for asylum applicants who withdraw their applications or rejected cases, which focus on pre-departure assistance and re-installation in their countries of origin. Likewise, non-governmental organizations are encouraged to be more involved in some countries with providing assistance to rejected asylum-seekers to ensure their voluntary, legal departure. UNHCR will continue to promote the extension of these existing and similar arrangements, on a regional basis.

## **VII. CONCLUSION**

29. The ability of States to address the issue of return of persons not in need of international protection may contribute to preserving the quality of asylum in some regions. An analysis of the major source countries and grounds presented by claimants would illustrate the desirability of integrated policies, involving economic, social and development activities but also, as appropriate, the adoption of more active conflict resolution efforts and increased endeavours to promote human rights. Indications that many failed claimants come from countries with serious human rights problems or situations of conflict highlights the need for strategies which link domestic and international policies to address this issue in a holistic manner.

30. In conclusion, although UNHCR has a limited role in this area, the Office is willing to support States in their efforts to return categories of rejected asylum-seekers in line with its humanitarian mandate, provided UNHCR is satisfied with the refugee determination processes and that no persons in need of international protection are affected.

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1 See General Assembly resolutions 45/150 of 14 December 1990, para.9; 46/106 of 16 December 1991, para. 10; 47/105 of 16 December 1992, para. 10.

2 See General Assembly resolution 45/140 of 14 December 1990, para. 17.

3 See EC/SCP/64, 12 August 1991.