

Conclusion on the return of persons found not to be in need of international protection



EXCOM Conclusions, 10 October 2003

The Executive Committee,

Expressing appreciation for the timely and useful discussion which took place on the return of persons found not to be in need of international protection, in the context of the Global Consultations on International Protection¹, and which led to Goal 2, objective 7 of the Agenda for Protection;²

Bearing in mind that the efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole, as well as to the control of irregular migration and prevention of smuggling and trafficking of such persons;

Concerned by the difficulties experienced by many countries of asylum in different parts of the world in effecting the return of persons found not to be in need of international protection, which have served to undermine the integrity of individual asylum systems;

Recalling the obligation of States to receive back their own nationals, as well as the right of States, under international law, to expel aliens while respecting obligations under international refugee and human rights law;

Recalling also that the 2000 United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air³ sets out the obligation of States parties to facilitate and accept, without undue or unreasonable delay, the return of a person who has been smuggled and who is its national or who has the right of permanent residence in its territory at the time of return;

Observing that, for the purposes of this Conclusion, the term "persons found not to be in need of international protection" is understood to mean persons who have sought international protection and who after due consideration of their claims in fair procedures, are found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention, nor to be in need of international protection in accordance with other international obligations or national law;

(a) *Reaffirms* the right of everyone to leave any country, including his or her own, and to return to his or her own country as well as the obligation of States to receive back their own nationals, including the facilitation thereof, and remains seriously concerned, as regards the return of persons found not to be in need of international protection, that some countries continue to restrict the return of their own nationals, either outright or through laws and practices which effectively block expeditious return;

(b) *Emphasizes* that the credibility of individual asylum systems is seriously affected by the lack of prompt return of those who are found not to be in need of international protection;

(c) *Reiterates* that return of persons found not to be in need of international protection should be undertaken in a humane manner, in full respect for human rights and dignity and, that force, should it be necessary, be proportional and undertaken in a manner consistent with human rights law; and *emphasizes* that in all actions concerning children, the best interests of the child shall be a primary consideration;

(d) *Recognizes* the importance that persons found not to be in need of international protection cooperate with return arrangements;

(e) *Calls on* States to cooperate regarding the efficient and expeditious return of persons found not to be in need of international protection, to their countries of origin, other countries of nationality or countries with an obligation to receive them back, notably by;

cooperating actively, including through their diplomatic and consular offices, in establishing the identity of persons presumed to have a right to return, as well as determining their nationality, where there is no evidence of nationality in the form of genuine travel or other relevant identity documents for the person concerned;

finding practical solutions for the issuance of appropriate documentation to persons who

are not or no longer in possession of a genuine travel document;

(f) *Calls upon* States parties to the 1951 Convention and the 1967 Protocol to facilitate the return of persons found not to be in need of international protection by providing facilities for the transit of such persons taking into account, where applicable, agreements concerning the mutual recognition of asylum determination decisions;

(g) *Recalls* further that Annex 9 to the 1944 Convention on International Civil Aviation requires that States, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time, and not more than 30 days after such a request is made, either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals;

(h) *Refers to* its Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons, and *urges* States to take steps to avoid cases of statelessness as well as to adopt measures leading to the grant of a legal status to stateless persons;

(i) *Welcomes* the expertise developed by IOM in the assisted voluntary return of persons found not to be in need of international protection and *notes* UNHCR's cooperation with IOM in this area;

(j) *Recommends*, depending on the situation, that UNHCR complement the efforts of States in the return of persons found not to be in need of international protection by:

Promoting with States those principles which bear on their responsibility to accept back their nationals, as well as principles on the reduction of statelessness;

Taking clear public positions on the acceptability of return of persons found not to be in need of international protection,

Continuing its dialogue with States 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 nationality and could be used to stop or delay the return of a person to a country of nationality;

(k) *Takes note of* UNHCR's readiness, on a good offices basis, to support States, upon their request, in their endeavours to return persons found not to be in need of international protection, in particular where obstacles to return are encountered and provided that the involvement of the Office is not inconsistent with its humanitarian mandate to provide international protection to refugees;

(l) *Stresses* the importance of ensuring the sustainability of returns and of avoiding further displacements in countries emerging from conflict, and *notes* that phasing returns of persons found not to be in need of international protection can contribute to this; while *also recognizing* that once a person found not to be in need of international protection has made an informed decision to return voluntarily, this should take place promptly;

(m) *Notes* the value of State data on return of persons found not to be in need of international protection to assist in analysing the rate of return and the scope of the problem of achieving returns.

1 EC/GC/01/15/Rev.1.

2 A/AC. 96/965 Add. 1

3 Article 18(1).