

**ANNUAL CONSULTATIONS WITH NGOs
11 – 13 JUNE 2013 - International Conference Center Geneva**

THEMATIC SESSION

BACKGROUND PAPER

National asylum systems: building and maintaining protection systems for refugees

Wednesday 12 June 2013, 14h30 – 16h15 - Room 4

Outline:

States are primarily responsible for the protection of refugees, including by (a) ensuring access to territory and protection from *refoulement*, (b) humane and dignified reception arrangements, including protection against arbitrary detention, fair and efficient status determination procedures, (c) the enjoyment of rights, and (d) facilitating durable solutions. A range of actors are relevant to determine the quality of the protection in a state, including the legislature/parliament, the executive, the judiciary, the legal community, the media and press, civil society, the public, academia, and the international community as a whole, including UNHCR.

To effectively build, strengthen and sustain state asylum/protection systems it is important to understand the gaps, problems and challenges in respect of the system and the stakeholders involved. How progress is leveraged in this area varies depending on a range of factors, including the political, economic, socio-cultural, legal, and regional contexts, as well as broader migration trends and the level of development of the system in issue.

Three different levels of asylum/protection systems can be distinguished, and may call for differentiated approaches and strategies:

Level 1: no functioning state asylum/protection system, where the state is unable or unwilling to undertake its responsibilities, and where UNHCR together with partners, including civil society organizations, could be considered the principal protection actors (including the delivery of protection on the ground, enjoyment of rights, and carrying out mandate RSD as appropriate).

Level 2: “transitional systems”, where the state either has assumed responsibility for some aspects of the asylum/protection system or has indicated willingness to adopt or amend laws and/or to institute state asylum/protection procedures and processes. This level would include countries that have taken over responsibility for asylum/protection issues from UNHCR and partners (including mandate RSD), but which are not yet fully functional.

Level 3: developed systems, where the state is in full control, such that (i) the system is based on the rule of law, (ii) legislative and policy frameworks are in place, (iii) different branches of government are involved in a proper manner (the judiciary is independent and there is effective access to the courts; administrative decision-making bodies, such as RSD bodies, are also independent, and there is judicial review; trained police and border officials, etc.), (iv) there is space for civil society and for free press, (v) the legal profession is equipped, and (vi) there is non-discrimination in the administration of justice, access to justice and effective remedies. Within this level also are many countries with different challenges, including those where legal and political systems have become “over-sophisticated” to the point where access to asylum is under threat because of restrictive interpretations and practices, as well as countries which were once rights-respecting but are now regressing because of the political environment or the broader migration challenges.

The panel will include representatives of civil society organizations from a country that has no system (Egypt), a transitional system (Israel), and a developed system (South Korea). Using their experience from a specific country each panelist will draw some general remarks and conclusions. The presentations will focus on what is needed and how civil society and UNHCR can cooperate in assisting states in building, strengthening and sustaining asylum/protection system by addressing the following three questions:

- What are the essential building blocks for a national asylum system that enables refugees to enjoy their rights?
- How can key stakeholders best take responsibility for building and maintaining a national asylum system? And for which block or blocks?
- How can civil society and UNHCR better advocate for and cooperate in this regard?

For Egypt, despite being party to both the Refugee Convention and the African Convention, the country relies on UNHCR to conduct RSD and domestic law is largely silent with respect to the rights of refugees. Egypt's treatment of refugees has over the past decade vacillated between relatively benign neglect and more active hostility towards particular refugee populations. Although the social and economic situation of refugees has deteriorated since the Revolution, there are new political opportunities to develop a national asylum system. A key challenge is ensuring the system achieves enough political support to be implemented while increasing the level of support to refugees offered by the Egyptian state, particularly with respect to the key rights to education, social services and work.

As for Israel, since 2009 the country has handled the RSD process. The government has established an RSD unit and judiciary review. In reality, refugees face *refoulement* at the Egyptian-Israeli border, arbitrary detention, and discriminatory access to the asylum procedure. The annual recognition rate is 0,2%. Since the ratification of the Refugee Convention in 1951 the Israel has recognized 176 refugees, with the large majority recommended by UNHCR prior to 2009 before asylum review was handed over to the Ministry of Interior. Following CSO actions, and UNHCR guidance, some building

blocks for a functioning asylum system are in place. That said, Israel offers no durable solutions apart from “voluntary” return.

In South Korea, due to 7-year-long collaboration among various stakeholders, a comprehensive refugee act was enacted in 2011, which will go into force this July. However, most refugee rights are at the discretion of the authorities and both the government and the courts maintain a very restrictive approach towards the refugee definition. Further, South Korea is facing increasing xenophobic sentiment and movement even though a network among advocates for refugee rights, including UNHCR and NGOs, has been strengthened and expanded. The network is trying to focus on some specific issues, e.g. livelihood of asylum-seekers, detention, *non-refoulement* at the border.

Finally, UNHCR’s core mandate is assisting States to establish sustainable national asylum systems. Building and maintaining such systems requires identifying and understanding gaps, problems, challenges and opportunities. UNHCR is seeking to cooperate closely with partners, including civil society organizations, to develop effective strategies in this regard.

Moderator:

Ms. Karin Keil, Caritas Internationalis

Panelists:

Mr. Martin Jones, Egyptian Foundation for Refugee Rights, Egypt

Ms. Reut Michaeli, Hotline for Migrant Workers, Israel

Mr. Pill Kyu Hwang, Gonggam Human Rights Law Foundation, South Korea

Ms. Janice L. Marshall, UNHCR, Deputy Director, Policy and Law, Division of International Protection

Rapporteur:

Ms. Shahar Shoham, Physicians for Human Rights Israel