



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

CONCEPT PAPER

High Commissioner's Dialogue on Protection Challenges: "Protection Gaps and Responses"

Geneva, 8-9 December 2010

I. INTRODUCTION

'Protection Gaps and Responses' is the theme of the fourth High Commissioner's Dialogue on Protection Challenges, which will be held in Geneva on 8 and 9 December 2010. This year's Dialogue is a precursor to the marking in 2011 of the 60th anniversary of the 1951 Convention Relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, which will culminate in a ministerial-level meeting of States Parties on 7 and 8 December 2011. The discussions and outcomes of the 2010 Dialogue will feed into the ministerial meeting in 2011. This concept paper provides some initial background information on the theme and outlines the objectives of the 2010 Dialogue. The commemorations will be the subject of a separate note.

II. GAPS IN THE INTERNATIONAL PROTECTION REGIME AND POSSIBLE RESPONSES

The 'international protection regime' refers to the standards and practices set in place by the international community for refugees and stateless persons.¹ It is flexible and continues to evolve in response to new displacements and contemporary needs. However, it has long been recognized that there are 'gaps' in the international protection regime. The 2000-2002 Global Consultations on International Protection, initiated by UNHCR with the involvement of States, non-governmental organizations, refugees and other relevant actors, stemmed from this realization. The Consultations led to broad-ranging recommendations on ways to improve the refugee protection regime in the face of contemporary challenges, embodied in an internationally endorsed Agenda for Protection. Discrete protection gaps have also been the subject of earlier High Commissioner's Dialogues, particularly the 2007 Dialogue on refugee protection, durable solutions and international migration and the 2009 Dialogue on urban refugees.

There has been some success in closing protection gaps over the years. Various measures have been taken by various stakeholders in follow-up to the Agenda for Protection (annual updates on progress made can be found on UNHCR's website), The Agenda provides key policy directions for UNHCR and effectively guides its

¹ The international protection framework principally consists of: the 1951 Convention relating to the Status of Refugees as amended by its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; as well as regional refugee and nationality/statelessness instruments. They are complemented by international human rights law. Given its supervisory responsibility, UNHCR has a particular role to play within this regime.

protection work. For example, UNHCR has developed a number of operational and legal guidelines, standards and handbooks in furtherance of its objectives. The Executive Committee of the High Commissioner's Programme has adopted a series of Conclusions on themes identified in the Agenda for Protection, including on sexual abuse and exploitation; legal safety issues in the context of the voluntary repatriation of refugees; international cooperation and burden and responsibility sharing in mass influx situations; the provision of international protection including through complementary forms of protection; women and girls at risk; the identification, prevention and reduction of statelessness; and protracted refugee situations. Protection gaps have also been filled through the policies, practices and actions of States and the adoption of legal instruments by regional bodies, including the African Union and the European Union.

Notwithstanding these positive developments, a number of protection gaps and challenges remain, related to both the international protection framework itself and its implementation. Such gaps require new responses. A persistent theme in gaps discussions has been the need to achieve a more consistent and coherent understanding on burden and responsibility sharing. This goes to the core of the international refugee protection regime. Yet in the absence of clearly defined principles, burdens and responsibilities are not always fairly distributed between States and are the subject of ad hoc arrangements, with little predictability. Moreover, displacement situations in certain regional contexts can have a heightened shared dimension and go beyond the capacity or scope of national asylum systems or bilateral arrangements. In such instances, multilateral tools for protection and solutions are lacking. The Dialogue could consider how to enhance cooperation and burden sharing, and how regional protection or cooperation arrangements could most effectively be employed in parallel with national asylum systems, to ensure that persons do not fall into protection gaps.

On a more general level, questions have also been raised about the capacity of the existing international protection framework to address contemporary forms of displacement. The Dialogue and 2011 commemorations could provide an opportunity to explore a new protection dynamic, which could lead to more flexible and agile ways to deal with protection gaps for people who do not fit comfortably within the existing international legal framework.

Given the forthcoming 50th anniversary of the 1961 Convention on the Reduction of Statelessness in 2011, this is also a timely opportunity to discuss issues relating to the 'forgotten problem' of statelessness. For the millions of stateless people around the world, lack of an effective nationality means they confront countless obstacles in realizing their basic rights. The size of the statelessness problem is not comprehensively mapped, there is limited accession to the relevant international treaties,² obstacles to the acquisition of nationality remain and some nationality legislation is in need of reform.³

² The 1954 Convention relating to the Status of Stateless Persons has 65 States parties while the 1961 Convention on the Reduction of Statelessness has 37.

³ Nationality legislation in some States, for example, renders women unable to confer nationality on their children.

III. QUESTIONS FOR THE DIALOGUE

In light of these challenges, the Dialogue will be structured around a number of questions:

- What mechanisms and tools could be developed to enhance cooperation and burden sharing?
- What are the operational and normative gaps which would warrant regional cooperation to address them and, in this context, what might be the components of comprehensive protection frameworks?
- How can accession to and full implementation of the statelessness conventions be enhanced? In addition to accession, what steps could be taken to prevent and reduce statelessness and protect stateless persons?

IV. OUTCOMES OF THE DIALOGUE

It is hoped that the 2010 Dialogue will serve to:

- Provide a forum to exchange suggestions for burden sharing arrangements and good practice examples;
- Identify key elements of comprehensive regional approaches to displacement situations;
- Possibly identify situations of forced displacement which may not be covered by the 1951 Convention and provide an opportunity for exchange on how States may better address these situations; and
- Identify causes of statelessness, obstacles to solutions and protection risks for stateless persons, and build consensus on how the international legal framework can be used to address these challenges.

V. PARTICIPATION AND FORMAT

Invitations to take part in the Dialogue will be extended to Member States of the Executive Committee of the High Commissioner's Programme and Standing Committee observers, relevant partners in the United Nations system, inter-governmental and non-governmental organizations, academics, experts, and other stakeholders.

The 2010 Dialogue will follow the same format as previous Dialogue meetings. UNHCR will prepare relevant documents to structure the discussions. The High Commissioner will chair the Dialogue. To keep the deliberations as frank, interactive and informal as possible, they will consist of a mix of plenary sessions and breakout groups. None of the discussions will be attributed to individual participants. The High Commissioner will not seek to secure a negotiated outcome but will rather round off the discussions with a "Chairman's Summary".

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