



General Assembly

Distr.
GENERAL

A/AC.96/1053
30 June 2008

ENGLISH
Original: ENGLISH AND FRENCH

EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME

Fifty-ninth session
Geneva, 6-10 October 2008
Item 5(a) of the provisional agenda
Reports on the Work of the Standing Committee
International Protection

Note on International Protection

Report by the High Commissioner

I. INTRODUCTION

1. The preamble to the 1951 Convention relating to the Status of Refugees refers to the 1948 Universal Declaration of Human Rights (UDHR) and reaffirms “the principle that human beings shall enjoy fundamental rights and freedoms without discrimination”. It also recalls the United Nations’ endeavour “to assure refugees the widest possible exercise of these fundamental rights and freedoms”. In light of the 60th anniversary of the Declaration, this year’s Note on International Protection focuses on the Articles of the Declaration of particular relevance to persons of concern to UNHCR.

2. In particular, the Note examines developments from mid-2007 to date regarding the right to seek and enjoy in other countries asylum from persecution and the right to a nationality (UDHR, Articles 14 and 15), which are given clear expression in the 1951 Convention and the 1954 and 1961 statelessness conventions. It also considers situations in which the rights of internally displaced persons (IDPs) were threatened. For each issue, the Note highlights the challenges faced and progress made during the reporting period in supporting these different categories of persons of concern to secure respect for their rights, and in assisting States to respect, protect and fulfil their obligations. It shows how the Declaration’s core principles of

freedom, equality and non-discrimination (UDHR, Articles 1 and 2) are central to these responses. At the same time, the rights and freedoms in the Declaration are universal, indivisible, interdependent, mutually reinforcing,¹ and as relevant to refugees and stateless persons as to nationals in their own country, including IDPs.

3. The aim is to bring out the complementary nature of international refugee and human rights law.² This relates not only to the development of the law, but also to UNHCR's cooperation with the human rights treaty monitoring bodies in its advocacy work on behalf of persons of concern. The intention is also to show that UNHCR's and States' protection responsibilities towards all persons of concern are firmly embedded in the human rights framework.

II. OVERVIEW OF DEVELOPMENTS

4. Throughout the reporting period, there were significant return operations. The number of people forcibly displaced within or outside their country nevertheless rose, including from or in Central Africa, Chad, Colombia, the Horn of Africa, Iraq, Kenya and Darfur (Sudan). At the beginning of 2008, UNHCR statistics indicated that there were 31.7 million persons of concern to the Office worldwide, including almost 11.4 million refugees or persons in a refugee-like situation, some 740,000 asylum-seekers who applied for asylum in 2007 or whose cases were pending, 731,000 refugees who repatriated voluntarily in 2007, and almost 3 million stateless persons. In addition, there were approximately 13.7 million IDPs protected and/or assisted by UNHCR, out of an estimated global total of 26 million IDPs whose displacement was conflict-induced.³

5. Iraqis displaced within and outside their country made up the largest single nationality group in these figures. Nearly 2.4 million were displaced within Iraq, while Jordan and the Syrian Arab Republic together accommodated an estimated 1.5 million to 2 million. These are the largest urban refugee situations UNHCR has ever been seized with and the Office worked during the reporting period to consolidate protection space for their benefit. Resettlement was used as an important burden-sharing tool, with the Office exceeding its target of 20,000 submissions for 2007, although departures were significantly less. While conditions prevailing in Iraq were not conducive to promoting or organizing returns, UNHCR remained ready to assist refugees and IDPs willing to return.

6. In Africa, the humanitarian crises in Central Africa, Chad, Somalia, and Darfur (Sudan) were exacerbated by renewed conflict and insecurity and resulted in further displacement. For instance, 600,000 Somalis were displaced internally during 2007 because of fighting, particularly

¹ A/RES/60/251.

² Executive Committee Conclusion No. 95 (LIV), 2003, para. (I).

³ UNHCR amended its categorization of persons of concern in 2008, excluding, for instance, resettled refugees from refugee estimates in industrialized countries. Comparisons with data from earlier years therefore have limited relevance. The total figure for "conflict-induced IDPs" is from the Internal Displacement Monitoring Centre.

in Mogadishu, increasing the estimated IDP population in Somalia to 1 million. UNHCR was able to provide emergency relief assistance in some areas, but insecurity often severely restricted access. In Darfur, a joint African Union/United Nations Hybrid peacekeeping operation approved by the Security Council in July 2007 included a mandate to protect civilians. Another in Chad and the Central African Republic, approved in September, established a **multidimensional presence**, supported by a European Union protection force, to help create the security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons, including by contributing to the protection of refugees, displaced persons and civilians in danger and by facilitating the provision of humanitarian assistance. Fresh conflict nevertheless made it difficult to stabilize the serious humanitarian situation, particularly in eastern Chad. Access was seriously restricted and international aid agencies and partners struggled to support those most at risk and respond to high incidence of sexual violence. With police under-equipped to respond to security incidents, numerous rights violations, including of the right to life, liberty and security of the person, could not be prevented or redressed effectively.

7. In the Democratic Republic of the Congo, renewed fighting in the east resulted in further displacement, heightened risk and sexual atrocities of extreme brutality against thousands of women and girls, which have been described as in many cases amounting to war crimes and crimes against humanity.⁴ Preventing and responding to these situations in such an unstable environment posed major problems. Working through the protection cluster, UNHCR supported training initiatives to sensitize troops on their “zero tolerance” obligations towards sexual and gender-based violence (SGBV), set up referral mechanisms in IDP sites where it worked, monitored SGBV cases and advised IDPs on potential avenues for redress.

8. In Kenya, inter-communal violence following contentious elections in December 2007 displaced some 350,000 people internally. UNHCR dispatched emergency staff and resources to support the inter-agency response to the crisis. In Zimbabwe, the political, economic, security, humanitarian and human rights situation deteriorated, compelling many to flee.

9. In 43 industrialized countries worldwide, the number of people seeking asylum in 2007 rose by 10 per cent to 342,300. Iraqi asylum-seekers were largely responsible for this growth. The total was the first increase in five years after a 20-year low in 2006, but was half the number of applications recorded in 2001 when over 655,000 persons sought asylum.⁵

10. Throughout the reporting period, UNHCR strove to fulfil its responsibility to integrate a rights- and community-based approach into its work,⁶ including by working to ensure an inclusive and participatory approach to mainstreaming age, gender and diversity throughout its operations and thereby promote the equal enjoyment of rights by all of concern. The Office completed its roll-out of age, gender and diversity mainstreaming (AGDM) by the end of 2007,

⁴ Special Rapporteur on violence against women, Statement, 62nd session General Assembly, Third Committee, 25 October 2007.

⁵ UNHCR, “Asylum Levels and Trends in Industrialized Countries: 2007 Statistical Overview”, March 2008.

⁶ UN Charter, Article 55(c); 1993 Vienna Declaration of World Human Rights Conference; 2005 World Summit Outcome Document, A/RES/60/1, para. 126; Executive Committee Conclusion No. 107 (LVII), 2007, para. (b)(x).

with 109 country operations having set up multifunctional teams and conducted participatory assessments. Tools issued included a *UNHCR Handbook for the Protection of Women and Girls* and a *Manual on a Community-Based Approach in UNHCR Operations*, while Executive Committee Conclusion No. 107 (2007) on Children at Risk provided operational guidance to strengthen protection and mainstream this aspect of AGDM into operations. The Convention on the Rights of Persons with Disabilities and its Optional Protocol – in force since May 2008 – represent important tools to mainstream one aspect of diversity into the actions of States Parties and UNHCR.

III. THE RIGHT TO SEEK ASYLUM

11. The institution of asylum, including the legal framework established by the 1951 Convention and 1967 Protocol, derives directly from the right to seek and enjoy asylum affirmed in Article 14 of the Universal Declaration.⁷ International human rights law, which generally applies to all persons within a State's territory or jurisdiction, thus provides the overarching framework for the protection of asylum-seekers and refugees. International refugee law, including relevant regional instruments, represents an essential part of this framework and addresses their specific concerns. This section focuses on the right to seek asylum, which is also linked to the right to leave any country including one's own (UDHR, Article 13(2)), while the next concerns the right to enjoy asylum.

A. Principle of non-refoulement

12. Central to the realization of the right to seek asylum is the principle of *non-refoulement*. This prohibits any form of forcible removal, whether direct or indirect, to a threat to life or freedom (1951 Convention, Article 33) or to torture, cruel, inhuman or degrading treatment or punishment (UDHR, Article 5 and subsequent developments in international human rights law). It includes deportation, expulsion, extradition, "rendition" and non-admission at the border. On the whole, the principle continued to be respected, during the reporting period, including by countries not party to the 1951 Convention, among them Jordan, Pakistan and the Syrian Arab Republic, or those where there are no provisions for the principle in national law. In Morocco, an agreement concluded between the Government and UNHCR in July 2007 led to clear Ministry of Interior instructions to law enforcement authorities to respect UNHCR refugee documentation and not to arrest and deport persons of concern. A significant decrease in deportations resulted. Among other developments, the European Court of Human Rights reaffirmed the absolute nature of the prohibition of return to torture.

13. Violations of the principle nevertheless occurred. Many asylum-seekers and even refugees were deported as illegal migrants as part of government migration control measures. Asylum-seekers were particularly vulnerable to deportation if detained. Reasons included: alleged illegal status; non-issuance of documentation attesting their status; inadequate airport procedures; and lack of sufficient safeguards in extradition cases. Removals of asylum-seekers to third countries, including without substantive examination of their claims, were not always effected with sufficient safeguards. Many readmission agreements on the return of migrants did not contain exceptions for asylum-seekers and refugees, thus raising the risk of *refoulement*. Sometimes, legislative exceptions to the principle went beyond those in Article 33(2) of the 1951

⁷ Executive Committee Conclusion No. 82 (XLVIII), 1997, para. (b).

Convention, particularly in the context of counter-terrorism efforts. Security concerns were also cited as grounds for deportation, including of unaccompanied refugee children. In a few Commonwealth of Independent States countries, the principle, though otherwise upheld, was not respected in relation to groups from particular countries or regions.

14. UNHCR intervened frequently on behalf of asylum-seekers and refugees threatened with deportation. However, expulsion could not always be prevented, including where UNHCR or partners had only limited or no presence. Some individuals detained for expulsion were released for emergency resettlement. Others who had been deported were readmitted. The Office continued to train border police and immigration officials in numerous countries on their *non-refoulement* obligations and on how to identify international protection needs. Joint border and/or airport monitoring was undertaken with government authorities and/or NGO partners to help prevent *refoulement* and ensure access to territory for persons of concern.

B. Mixed population movements

15. The right to seek asylum was also threatened where asylum-seekers were part of mixed population movements. Many fleeing persecution and conflict were unable to use legal means to reach safety and so undertook perilous journeys amidst others fleeing poverty or precarious living conditions. In the process, they frequently faced torture, rape, abuse and exploitation by smugglers, pirates, officials and others. Unaccompanied and separated children caught up in irregular movements were at particular risk of sexual and labour exploitation. On land, asylum-seekers could find their entry blocked, especially in remote, unstable border regions. Amongst those taking to the seas, the mounting death toll in the Mediterranean, eastern Atlantic, Gulf of Aden and Caribbean continued to catch media attention.

16. So that asylum-seekers fleeing in the context of mixed population movements could nevertheless seek asylum, UNHCR endeavoured to reconcile and balance the imperative of refugee protection and States' migration management interests. This included promoting implementation of the differentiated responses set out in UNHCR's 2006 10-Point Plan of Action, ranging from refugee status determination (RSD) to specialized visa or labour migration arrangements. In Europe, UNHCR and its partners strengthened their presence on four Aegean islands in Greece, monitoring and counselling migrants and asylum-seekers arriving there. In Yemen, the first of a series of regional conferences was held in May 2008 to develop a regional Plan of Action to address mixed migration flows from the Horn of Africa. In March 2008, in Mexico, the authorities appointed 68 child protection officers, who had received training from UNHCR and its partners, under a pilot programme to protect the thousands of unaccompanied or separated young migrants intercepted in Mexico on their way from Central America to Mexico and North America each year.

17. The first of the High Commissioner's Dialogues on Protection Challenges, involving a wide range of stakeholders, took place in Geneva in December 2007 to discuss refugee protection, durable solutions and international migration. The meeting recognized there are protection gaps in mixed flows, especially as regards migrants deemed "irregular" by the authorities who fall outside established protection frameworks, but who otherwise need

humanitarian assistance or other kinds of protection. The Dialogue called for rights-based approaches in addressing these gaps and placing all migrants' human rights and dignity to the fore.

18. On rescue at sea, the right to seek asylum was jeopardized if shipmasters did not rescue those in distress and when Governments were unwilling to disembark those rescued, including asylum-seekers. States' protection responsibilities were relatively clear where individuals were intercepted or rescued in territorial waters, but differences remained over protection obligations outside such waters. In UNHCR's understanding, responsibility, including for *non-refoulement*, is engaged whenever a State asserts jurisdiction.

C. Trafficking

19. The possibility for victims of trafficking to seek asylum was also put at stake when, for example, victims identified by law enforcement officials were not properly interviewed or referred to asylum authorities. In some States, the practice of removing victims of trafficking from asylum procedures and transferring them to procedures to assess eligibility for residence permits for victims of trafficking effectively obstructed their right to seek asylum. Even when granted, such permits were usually only temporary, linked to willingness to testify against traffickers, and typically provided fewer and lesser rights than those applicable to refugees.

20. In response, UNHCR worked to ensure that victims of trafficking, whether actual or potential, who were at risk of persecution on refugee grounds if returned, could access asylum procedures and secure international protection. Emphasizing a rights-based approach, including the right not to be subjected to slavery or servitude (UDHR, Article 4), the Office also worked to protect persons of concern from becoming victims of trafficking. At country level, this involved promoting the incorporation of access to asylum procedures for victims of trafficking into national action plans on trafficking, and into standard operating procedures to identify victims and ensure that they were dealt with properly. Additionally, UNHCR worked to familiarize Governments and partners with relevant international protection responsibilities. Regionally, in November 2007, the Office hosted, jointly with the International Organization for Migration (IOM), a seminar on strengthening collaborative responses to migration, refugee protection and trafficking in the Caribbean. In February 2008, the Office took part in the Vienna Forum of the UN Global Initiative to Fight Human Trafficking, highlighting States' protection responsibilities towards victims of trafficking.

D. Access to asylum procedures

21. The right to seek asylum was also jeopardized where access to fair and effective asylum procedures was lacking. The inconsistent application of Convention standards was another problem. For instance, refugee recognition rates for asylum-seekers of certain nationalities continued to diverge widely among and within States. In particular, claimants from countries such as Iraq, Somalia or Sri Lanka had very different recognition prospects depending on where they claimed asylum. A November 2007 UNHCR study on the transposition of the European

Union “Qualification Directive” in selected Member States found that there were still significant differences in law and practice and that transposition of European Union asylum instruments remained incomplete.

22. The application of “safe third country” policies, which operate on the presumption that asylum-seekers must request asylum in the first safe country they reach, also affected access to substantive asylum procedures. For instance, in the European Union, the problems of harmonization of Member States’ asylum procedures and practices, combined with application of the “Dublin II” Regulation, which assigns responsibility among Member States for assessing asylum claims substantively, meant that asylum-seekers arriving in the European Union were sometimes passed from one Member State to another. This meant that they faced difficulties accessing substantive procedures in some European Union countries. The operation of the United States-Canada Safe Third Country Agreement also came into question following a November 2007 ruling by the Canadian Federal Court, which found that application of the Agreement *inter alia* violated refugees’ rights to life, liberty and security and to non-discrimination. The agreement nevertheless remains in place, while an appeal against the ruling is pending.

23. More generally, status determination procedures were sometimes not of sufficiently high quality, or not based on timely and accurate country of origin information that was also duly sensitive to age, gender and diversity. Increasingly, some countries determined asylum claims on the basis of interests other than international legal standards. This politicized the process, even though the grant of asylum has been affirmed as a humanitarian and non-political act.

24. In other countries, because Governments were not engaged in refugee status determination (RSD), UNHCR continued to be responsible for this in order to uphold the right to seek asylum. Between 2003 and 2007, the number of asylum applications made to States (including in States where decisions were made jointly with UNHCR) globally decreased by 25 per cent to 647,000 individuals, and the decrease in industrialized countries was even greater. Over the same period, the number of applications submitted in countries where UNHCR was responsible for RSD increased by 30 per cent to 80,000 persons, representing 12 per cent of the global total. This rise required the Office to increase provision of training, resources and assistance to its RSD operations. Under its RSD Deployment Scheme, over 30 experts were deployed to 14 country operations during 2007 and an “RSD Community of Practice” project was launched in early 2008 to enable UNHCR RSD officers worldwide to exchange knowledge, concerns and best practices online.

25. UNHCR nevertheless continued to advocate that States assume their status determination responsibilities. Capacity-building initiatives to support States in establishing functioning national asylum procedures included providing advice on draft legislation; visiting reception and detention facilities; and counselling asylum-seekers on their rights. Border guards, immigration officials, police, adjudicators and judges were trained on their obligations under international refugee and human rights law and on such issues as cross-cultural communication, gender sensitivity and determination of the best interests of the child. The Office made legal interventions in national and regional courts to support the progressive development of international refugee law, drawing also on complementary developments in international human rights law. A new Refworld internet site (<http://www.refworld.org>) was launched in June 2007,

and workshops and conferences were organized jointly with regional organizations, universities and other partners to raise awareness on international protection principles. The Strengthening Protection Capacity Project, with its multisectoral, collaborative, participatory and human rights-based approach, continued to work with stakeholders in 11 countries to improve the protection environment and strengthen State and community protection capacities.

26. Positive results achieved by States during the reporting period in upholding the right to seek asylum included Mauritania's inauguration of a national asylum procedure and recognition of a first group of 38 asylum-seekers as refugees. In the western Balkans, eastern Europe and elsewhere, States took increasing responsibility for improving their RSD decision-making capacity. In Serbia, for instance, an Asylum Law providing for national asylum procedures entered into effect in April 2008. In the European Union, the adoption in December 2007 of the Lisbon Treaty meant that once it enters in force, the Charter of Fundamental Rights, which includes a guarantee of the right to asylum, will have legal enforceability. At the same time, building on the achievements of the "Quality Assurance Initiative" to enhance decision making in the United Kingdom and Austria, UNHCR launched a similar cross-regional initiative in seven other European Union States during 2008. In Australia, the Government elected in late 2007 decided to dismantle the "Pacific Solution", moving to close its offshore processing centres in Nauru and Papua New Guinea.

IV. THE RIGHT TO ENJOY ASYLUM

27. Article 14 of the Declaration proclaims not only the right to seek asylum but also the right to enjoy asylum. During the reporting period, there have been both progress and challenges in strengthening asylum-seekers' and refugees' enjoyment of this and other related rights under international human rights and refugee law.

28. Registration and the provision of documentation (1951 Convention, Articles 27 and 28) remained key tools for securing the enjoyment of asylum, including access to rights and services and to family reunification, identifying those at risk, quantifying and assessing needs and implementing solutions. In some countries, authorities failed to undertake or to continue registration and status determination, resulting in a backlog of claims. This resulted in increased round-ups and detention of foreigners, including asylum-seekers and refugees, who lacked legal status because the Government was not registering them or undertaking status determination. By contrast, in Ecuador, the Government committed itself in May 2008 to implementing enhanced registration procedures in remote border regions for Colombians who had not applied for asylum. The process of registering the displaced population will both strengthen responses to their urgent needs and allow consideration of asylum applications on a group basis, applying the Cartagena refugee definition. In the Russian Federation, the authorities began issuing certificates to all asylum-seekers, ensuring a legal status as their claims were assessed. In Bangladesh, distribution of individual identification and ration cards for refugees from Myanmar in two camps has been helping to identify protection concerns and prepare for durable solutions. More generally, by the end of 2007, UNHCR's registration tool "*proGres*" had been rolled out in 57 country operations and 122 offices, resulting in the issuance of individual identity documents for many more asylum-seekers and refugees. This was supported by the training of 1,400 more staff in the new registration standards, tools and procedures.

A. The right to life, liberty and security of person

29. The right to life, liberty and security of person (UDHR, Article 3) is central to the enjoyment of asylum. Yet physical insecurity was increasingly the hallmark of many situations of displacement. Cases of camps attacked by rebel groups and forced recruitment of children by armed groups posed problems in a number of operations, including Chad. Insecurity also restricted humanitarian access by UNHCR, other United Nations and NGO partner staff, and exposed them to high risk. As noted by the Secretary-General, critical humanitarian access to civilian populations is often currently “anything but safe, certainly not timely and far from unhindered”.⁸ Frequently at the frontline of the Office’s field operations, UNHCR drivers were particularly at risk. Four were killed in the course of duty during 2007, including two in the Algiers bomb attack on the United Nations building in December 2007, in which a total of 17 United Nations staff and other personnel lost their lives.

30. SGBV remained a major problem in many situations for persons of concern, particularly women and girls. Many were often exposed to rape, attack, abduction, honour killings, female genital mutilation,⁹ child marriage, sexual harassment, and other violations of the rights to life (UDHR, Article 3), freedom from torture, cruel, inhuman or degrading treatment (UDHR, Article 5) and an effective remedy (UDHR, Article 8). In addition to responses to the situation in the Democratic Republic of the Congo mentioned above, UNHCR participated more broadly in the inter-agency initiative “Stop Rape Now: UN Action against Sexual Violence in Conflict” to galvanize a coordinated effort in tackling the issue. Technical support during the reporting period included training with partners of SGBV coordinators and gender advisors. The High Commissioner allocated additional funding for projects in 2007 and 2008 to reinforce SGBV prevention and response in over 15 countries, including initiatives to implement procedures to identify and refer SGBV survivors to relevant services, establish safe shelters and provide livelihood opportunities. In Jordan and the Syrian Arab Republic, UNHCR and its partners worked with Iraqi refugees to identify women and girls at risk of resorting to negative coping strategies such as survival sex, to provide assistance and, where necessary, to secure emergency resettlement. In Nepal, where research showed that refugee women and girls with disabilities were vulnerable to abuse and violence, including sexual abuse, UNHCR provided training on SGBV prevention and response, reporting mechanisms, legal rights and services.

31. The right to enjoy asylum was threatened in countries where asylum-seekers and refugees faced xenophobic abuse and attacks. Caught up in general anti-foreigner violence or specifically targeted, they were sometimes forced to move to other parts of the country or even killed. States have the responsibility to provide equal protection against any discrimination violating the Declaration (UDHR, Article 7) and to foster education promoting understanding, tolerance and friendship among nations, racial and religious groups (UDHR, Article 26(2)). In Ukraine, for instance, UNHCR, IOM and civil society cooperated to respond to increased xenophobic attacks with a “Diversity Initiative”, monitoring incidents and coordinating responses, including with the authorities.

⁸ S/2007/643, para. 33.

⁹ 2008 Inter-agency Statement on Eliminating Female Genital Mutilation.

B. The right to freedom of movement

32. During the reporting period, some States resorted increasingly to the detention of asylum-seekers and refugees, including children. Arbitrary detention, including among common criminals and/or without access to *habeas corpus* or judicial review, was particularly worrying and contrary to the rights to liberty and to not be subjected to arbitrary arrest (UDHR, Articles 3 and 9). Sometimes detention periods were prolonged or even indefinite. In some situations, conditions were so overcrowded and poorly ventilated, without the most basic amenities or nutrition, as to amount to inhuman and degrading treatment (UDHR, Article 5). Sometimes detention even resulted in death (UDHR, Article 3). Rejected asylum-seekers in particular were increasingly detained before expulsion, while others who could not be returned for reasons beyond their control ended up destitute, without legal status or access to services in a number of countries. In response, UNHCR and its partners worked in numerous operations to monitor detention facilities, discourage placement of asylum-seekers in prisons alongside criminals, help identify asylum-seekers within undocumented migrant groups, promote access to advice and medical attention and urge States to resort to detention of asylum-seekers only on an exceptional basis and in full consideration of possible alternatives. Thus, in Lebanon, sustained interventions by UNHCR and NGOs persuaded the authorities to agree in February 2008 to release nearly 500 detained Iraqis and allow them and others who were staying illegally in the country to regularize their situation.

33. The right of persons of concern to freedom of movement and residence (UDHR, Article 13(1)) was curtailed in other ways. Sometimes, they were required to relocate to certain areas of the country or were restricted to camps. In this respect, Rwanda's removal in April 2008 of its reservation to Article 26 of the 1951 Convention on freedom of movement was welcome. In numerous countries, UNHCR documentation helped facilitate greater freedom of movement. Nevertheless, the compounding effects of corruption by public officials and abusive arrest and detention of refugees and asylum-seekers remained problematic in a number of situations.

C. The right to equal protection of the law

34. Asylum-seekers, refugees and others of concern seeking access to justice often had difficulty in securing recognition as a person before the law, equal protection of the law, an effective remedy for violations of their rights and/or full equality in a fair and public hearing by an independent and impartial tribunal (UDHR, Articles 6–8 and 10; 1951 Convention, Article 16). Sometimes, they were too far from or denied access to national courts. Displaced women and girls were discriminated against in traditional justice mechanisms in camps. Alternatively, upon return home, the rule of law was not adequately restored. To tackle these issues, UNHCR worked with partners, including NGOs and universities in numerous operations, to support the access of persons of concern to courts, including in refugee camps, and by engaging law firms and student clinics to assist access to courts.

D. The right to work

35. Continuing difficulties in securing access to the right to work for asylum-seekers and refugees (UDHR, Article 23; 1951 Convention, Articles 17–19), reflected many States' reluctance to allow foreigners access to national labour markets. Yet, access to employment is essential to realizing other human rights and is inherent to human dignity. It can protect against SGBV and is integral to achieving self-reliance and durable solutions. One project launched in 2007 called "Women Leading for Livelihoods" promoted displaced women's economic empowerment by funding sustainable income-generating projects. This included establishing a community centre for refugee women and children in Morocco and developing national needlework crafts for refugee and local women in Georgia, thus complementing SGBV prevention and response activities with refugee women.

E. The right to an adequate standard of living

36. The right to a standard of living adequate for health and wellbeing, including to clothing, housing and medical and necessary social services (UDHR, Article 25), is related to numerous rights, access to which should be granted on a non-discriminatory basis, including as regards national origin, physical or mental disability, or health status (for instance, regarding HIV/AIDS). It encompasses underlying determinants of health, such as access to safe, potable water and adequate sanitation and access to health-related education and information, including on sexual and reproductive health. In urban environments, however, many asylum-seekers, refugees and others of concern were unable to access housing, healthcare and other services. Where refugees were confined to camps, this could result in serious health problems, as in the case of the 2,700 Palestinian refugees who continued to live in the Syrian/Iraqi border area. Initiatives to address such challenges included those concerning the longstanding refugee populations of two Bangladeshi camps. New government openness regarding these refugees enabled UNHCR to begin improving living conditions and self-reliance through joint initiatives with other agencies and organizations. These included building new housing, imparting skills and supporting refugees to open small business initiatives in the camps.

37. With regard specifically to HIV/AIDS, asylum-seekers and/or refugees in some countries did not have access to HIV prevention and treatment services (or free services) or faced expulsion if found to be HIV positive. Initiatives to tackle some of these challenges included a joint UNHCR–United Nations Population Fund (UNFPA) photographic and video project to help destigmatize HIV/AIDS, by showing that people living with HIV can lead normal lives. Called "Positive Living", the exhibition toured refugee camps across Africa.

38. The right to adequate food (UDHR, Article 25), is critical to the enjoyment of all other human rights. It was an issue of concern during the reporting period, mainly because of unprecedented rises in food commodity prices, diminishing food stocks and resulting shortfalls in delivery of humanitarian assistance in a number of displacement situations. In response, UNHCR worked to support the World Food Programme in raising additional funding; ensure adequate and equitable food distribution; and mitigate the impact of the crisis by strengthening the food security and self-reliance of persons of concern.

F. The right to education

39. Non-discriminatory access to education (UDHR, Article 26; 1951 Convention, Article 22) is a fundamental human right and an indispensable means of realizing other rights. Sometimes, however, schools were not safe, due to discrimination, bullying or even attacks. In many locations, girl students dropped out because of domestic chores or early marriage. Nevertheless, among the positive developments, in August 2007, the Jordanian authorities allowed all Iraqi refugee children to enrol in public schools regardless of legal status. Together with its partners, UNHCR distributed vouchers for uniforms and stationery packages to the most vulnerable children and helped the Government expand its capacity to accommodate the intake. Meanwhile, the Albert Einstein German Academic Refugee Initiative Fund (DAFI), which continued to provide university scholarships to over 1,000 mainly African refugees, was extended to Jordan. In Georgia, refugee schools were fully integrated into the public education system in 2008, with refugee children able to continue education in their mother tongue. In refugee camps in Nepal, separate classes were arranged for children with severe physical or mental disabilities at a disability centre, so they could receive specialized tuition and physiotherapy, learn sign language and play.

V. THE RIGHT TO A NATIONALITY

40. Article 15 of the Declaration affirms everyone's right to a nationality and that no one shall be arbitrarily deprived of their nationality or denied the right to change their nationality. This right nevertheless remains only an aspiration for millions, many belonging to minority populations and/or stateless for years. UNHCR's work during the reporting period focused on the identification and protection of stateless persons and the prevention and reduction of statelessness.

41. Identifying and protecting stateless persons was complex since stateless people are, in most cases, not registered as such. They frequently have inadequate or no personal identity documentation, creating practical obstacles for their enjoyment of other rights. By early 2008, UNHCR only had reliable registration figures and estimates for approximately 3 million people in over 50 countries, although the number of stateless people worldwide is estimated at over 12 million. Very few of the 62 States party to the 1954 Convention on the Status of Stateless Persons have established formal procedures for determining whether a person is stateless. Mexico did, however, adopt a circular establishing a simple statelessness determination procedure, the first of its kind in Latin America.

42. With regard to the prevention of statelessness, States have increasingly moved in recent years to confer nationality using a combination of *jus soli* (nationality based on birth on the territory) and *jus sanguinis* (nationality by descent). Many States have, however, still not established safeguards to ensure that all children born on the territory can acquire the nationality of that State, if they would otherwise be left stateless. Without such guarantees, statelessness can pass from generation to generation, despite strong links resulting from years, or even decades, of residence in a country. The 1961 Convention on the Reduction of Statelessness, which now has 34 States parties, following Brazil's accession in 2007, and various regional human rights instruments all include safeguards against statelessness in such situations. Yet

these instruments have not been widely ratified and the legislation of many States still has to include relevant safeguards. Largely due to a historic tradition of *jus soli*, the Americas continued to stand out as a region where statelessness rarely occurs at birth. Elsewhere, UNHCR launched a free legal aid project in Serbia in May 2008 for Roma communities, including Roma displaced from Kosovo, to support birth registration, the issuance of documents, access to social services, healthcare, education and employment and to help avoid statelessness.

43. In many countries, statelessness resulted from women not having equal rights with men to pass on nationality to their children, contrary to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In such countries, when a child is born to a woman who is a citizen and a father who is not, statelessness may result if the father is stateless or the legislation of his country does not allow him to transmit his nationality to children born abroad. More commonly, the child may not be considered a national of the father's country because the child was not registered at a consulate when born abroad, for example, because the father abandoned the family or could not afford the travel costs to the consulate. A preliminary review of States party to CEDAW, whose nationality legislation did not permit men and women to pass on nationality to their children on an equal basis when CEDAW was adopted in 1979, nevertheless suggested that half had since amended those provisions, thereby eliminating a key cause of statelessness, at least in those countries.

44. In 2007, further strides were made in some countries in reducing protracted situations of statelessness, including those resulting from State succession. The Government of Bangladesh, for instance, began to register members of the Bihari/Urdu-speaking communities, whose rights as Bangladeshi citizens had not been recognized following the separation of what is now Bangladesh from Pakistan in 1971, for upcoming elections, and to issue them with national identity cards. In Turkmenistan, the Government launched, with UNHCR's support, a country-wide registration of individuals who had undetermined nationality or were undocumented, usually for reasons relating to the dissolution of the Soviet Union. Some 8,500 individuals who were stateless or at risk of statelessness were thus identified, and the authorities began examining their cases with a view to granting residence or citizenship. In The former Yugoslav Republic of Macedonia, UNHCR and its partners continued to help long-term stateless residents apply for nationality. This led to 800 people acquiring nationality in 2007, bringing the total number of those naturalized since more flexible criteria were introduced in 2004 to 4,700.

VI. THE RIGHTS OF INTERNALLY DISPLACED PERSONS

45. IDPs constituted a population of growing concern to UNHCR during the reporting period, given its increased responsibilities and enhanced operational engagement with conflict-induced IDPs and affected populations through the "cluster approach".

46. In regard to the right to life, liberty and security of person (UDHR, Article 3), many IDPs were caught up in fighting, including in the Central African Republic, Chad, Colombia, the Democratic Republic of the Congo, Iraq, Somalia, Sri Lanka and Sudan. Their camps and settlements were attacked and many (including children) forcibly recruited by armed groups. SGBV remained a particularly serious problem. Humanitarian workers had great difficulty

accessing IDP populations for security or other compelling reasons. From Colombia to Sudan, IDPs eked out a precarious existence in towns and cities; they were often unregistered, unable to access services and forced to live in squalid, illegal settlements.

47. A participatory, rights-based approach was integral to UNHCR's efforts to protect IDPs, as evidenced in common tools issued to build protection capacity in IDP operations. These included the inter-agency *Handbook for the Protection of IDPs* and the *Protection of Conflict-induced IDPs: Assessment for Action* framework. There was a strong focus on training, with UNHCR learning programmes now including modules on cluster responsibilities and skills. IDP operations continued to draw on ProCap, "Surge" and other deployment schemes.

48. UNHCR's "real time evaluations" of the implementation of the cluster approach in five operations in mid-2007 found that the Office's cluster leadership had made tangible progress in forging common visions among cluster partners and targeting resources more effectively on the basis of jointly defined needs. Among the challenges, experienced staff capable of providing leadership and strategic direction among a diverse group of actors in complex operational environments were difficult to identify and deploy quickly.¹⁰ Nevertheless, the November 2007 independent evaluation of the cluster approach initiated by the Inter-Agency Standing Committee found "evidence that the cluster approach has resulted in some systemic improvement in coordinated humanitarian response". It welcomed UNHCR's significantly increased field level presence and leadership in certain IDP situations.

VII. DURABLE SOLUTIONS

49. Securing durable solutions for displaced persons of concern involves States, UNHCR and its partners working to restore respect for the full spectrum of their rights under international human rights law. For refugees, this has traditionally involved voluntary repatriation, thus exercising the right to return to one's country (UDHR, Article 13(2)), local integration or resettlement. For IDPs, it involves return to the place of origin, local settlement in the area where they have taken refuge or settlement elsewhere in the country, including by restoring respect for freedom of movement and residence (UDHR, Article 13(1)).

A. Protracted refugee situations

50. During the reporting period, a particular focus on protracted refugee situations helped counter their waning visibility and inadequate funding, chronic dependence on subsistence-level humanitarian assistance, substandard living conditions, frustration and consequent protection problems, including SGBV. The largest protracted populations at the end of 2007 were some 3 million Afghans in the Islamic Republics of Iran and Pakistan;¹¹ 336,000 Burundians in the United Republic of Tanzania; 192,000 Somalis in Kenya; 162,000 Sudanese in Uganda; 160,000 Eritreans in Sudan; 125,000 Myanmarers in Thailand; 113,000 Angolans in the Democratic Republic of the Congo; and 108,000 Bhutanese in Nepal.

¹⁰ Standing Committee document EC/58/SC/CRP.23, August 2007, para. 6.

¹¹ The refugee figure for Pakistan includes recognized refugees, registered Afghans in refugee villages and registered Afghans outside refugee villages living in a "refugee-like" situation. The latter receive no direct UNHCR assistance but benefit from advocacy and assistance in voluntary repatriation and upon return.

51. UNHCR worked with the Governments and partners concerned in the search for comprehensive solutions to such situations. This involved community-based approaches, taking into account host communities and people living in areas of return; promoting refugees' and returnees' inclusion in national development planning and priorities; and, in some cases, resettlement for refugees most at risk as a responsibility and burden-sharing tool. In eastern Sudan, for instance, comprehensive strategies agreed with the Government included immediate efforts to improve living conditions and livelihoods, and comprehensive verification/registration of refugees from early 2008. Data gathered and planned profiling and socio-economic surveys will be used to engage all actors in designing multi-year comprehensive durable solutions plans and enhance identification and response to persons at risk (including through strategic use of resettlement). This information will be used to provide refugees with individual identity documents, helping secure protection from arbitrary arrest and facilitating access to employment and identify knowledge and skills useful for local integration. Strategies in Southeast Asia included group resettlement of over 14,600, mostly Myanmarese, refugees from Thailand. In Nepal, a comprehensive registration exercise and distribution of identification cards was completed in April 2008, security in camps was increased and accelerated procedures for exit permits for resettling refugees instituted.

B. Voluntary return

52. Successful voluntary repatriation of refugees and return of IDPs, and sustainable reintegration thereafter, depend on strengthened protection of and respect for, human rights in places of origin. During 2007, a total of 731,000 refugees repatriated voluntarily, as compared with 734,000 in 2006. The largest repatriation, of some 374,000 refugees, was to Afghanistan. The country's capacity to protect its nationals nevertheless remained weak, even worsening in some areas. The security environment deteriorated, absorption capacity remained lacking and restrictions continued to be placed on women and girls, threatening the sustainability of returns and even resulting in renewed displacement. Under these circumstances, UNHCR worked both to support the sustainability of return and preserve protection space for Afghans, particularly in Pakistan and in the Islamic Republic of Iran. Otherwise, major repatriation movements in 2007 were to Sudan (131,000); the Democratic Republic of the Congo (60,000); Iraq (45,000); Liberia (44,000); and Burundi (40,000). A new voluntary repatriation programme for Mauritanian refugees in Senegal, launched with the signing of a tripartite agreement, provided an opportunity for some 24,000 longstanding Mauritanian refugees to begin returning from early 2008.

53. Over 2 million IDPs protected and/or assisted by UNHCR also returned to their places of origin in 2007. Improved security in some provinces of the Democratic Republic of the Congo allowed an estimated 1 million IDPs to return, although continued fighting in other parts obliged some 500,000 to flee, often repeatedly. In Uganda, improved security in parts of the north, ongoing peace talks between the Government and the rebel Lord's Resistance Army, and generally improved freedom of movement allowed some 580,000 IDPs to return to their villages of origin. There are nevertheless still over a million internally displaced in each of these two countries. Other significant IDP returns took place in Lebanon, Nepal, Sri Lanka and Sudan. Returnees, however, sometimes required ongoing protection and assistance to rebuild their lives regain access to services and property and sustain return. In Uganda, for instance, widows faced difficulties reclaiming property, even though they were entitled to do so under customary law.

54. In February 2008, the Office issued a revised policy framework and implementation strategy on its role in support of return and reintegration, the latter being defined as “the progressive establishment of conditions which enable returnees and their communities to exercise their social, economic, civil, political and cultural rights and on that basis to enjoy peaceful, productive and dignified lives”.¹² The framework sought to build upon wider United Nations initiatives to enhance system-wide coherence and consolidate support to peacebuilding processes. Accordingly, the Office was working to strengthen its partnership with integrated United Nations missions in the relevant operations, to enhance its input into integrated planning and evaluation processes and expand its engagement on rule of law, human rights and security issues (e.g. mine action and disarmament, demobilization and reintegration of former combatants and dependants). The “Delivering as One” initiative provided further opportunities for early strategic engagement with development actors and for mainstreaming displacement-related concerns into common needs assessment and programming frameworks.

C. Local integration

55. Securing local integration for persons of concern involved the full establishment of their rights in the place of refuge, including, in the case of refugees, naturalization (1951 Convention, Article 34). In the United Republic of Tanzania, the Government offered naturalization and social and economic integration to the majority of Burundian refugees who had fled ethnic conflict in 1972, had since achieved self-reliance and wished to remain. Some 176,000 refugees are expected to benefit from this programme. As part of a comprehensive solutions approach for them, UNHCR supported the Burundi Government in promoting the repatriation of those wishing to return. In West Africa, seven Economic Community of West African States (ECOWAS) members participated in an initiative promoting the transition of Liberian and Sierra Leonean refugees to an alternative, secure legal status, in conjunction with integration support. In Nigeria, a multiparty agreement concluded between Liberia, Nigeria, Sierra Leone, ECOWAS and UNHCR set out the residence and work rights of refugees wishing to make the transition and the responsibilities of the parties. Australia’s announcement in May 2008 that it was ending its Temporary Protection Visa regime meant that refugees arriving independently in Australia would be granted permanent residency, regardless of mode of arrival, with access to family reunion and travel rights.

56. In Latin America, the “cities of solidarity” and “borders of solidarity” programmes of the Mexico Plan of Action consolidated progress made since the Plan’s adoption in 2004. By early 2008, municipal-government alliances had established a network of 25 cities of solidarity in seven countries, on the basis of agreements signed by each city with UNHCR. These provide for the incorporation of refugees into social programmes and their eventual local integration. Argentina, Brazil and Chile also earmarked national funds to assist refugee integration. Under the borders of solidarity programme, UNHCR and its partners developed nearly 1,000 microcredit, vocational training and housing projects in 350 border communities in Ecuador, Panama and the Bolivarian Republic of Venezuela. By early 2008, these projects had benefited over 160,000 people, including host communities, refugees and IDPs, many of whom were of Afro-Colombian or indigenous origin. Meanwhile, the positive impact on the protection of refugees of the human rights machinery was evident in Panama. UNHCR used

¹² Standing Committee paper EC/59/SC/CRP.5, February 2008, para. 4.

Recommendations made by the Human Rights Committee to lobby in favour of legislation permitting refugees legally resident in the country for more than 10 years to apply for permanent residence. A decree to this effect was approved in May 2008, enabling Panama to report favourably on this issue to the Committee the same day.

D. Resettlement

57. In 2007, the use of refugee resettlement was strengthened, including in protracted situations, as a form of burden and responsibility sharing, as outlined above, but also as an individual protection tool and on a group basis. The number of resettlement submissions made by UNHCR in 2007 increased significantly to almost 99,000 refugees, 83 per cent more than in 2006. The number of resettlement departures increased by 69 per cent to just under 50,000. Initiatives to support this expansion included baseline standard operating procedures for resettlement activities, an improved anti-fraud policy and procedural guidelines and pre-deployment training of resettlement staff deployed under the Resettlement Deployment Scheme. The Office also made particular efforts to improve the identification of refugee women and girls at risk needing resettlement in line with Executive Committee Conclusion No. 105 (2006), and using strengthened procedures set out in a Heightened Risk Identification Tool. The number of referrals of women and girls at risk increased by 72 per cent vis-à-vis 2006 to almost 6,000 in 2007, while departures increased by 24 per cent to almost 2,000. Scope remained, however, for resettlement countries and partners to secure speedier departure of such women and girls and any dependants.

58. Ten countries indicated their interest or readiness to receive resettlement referrals from UNHCR. Twinning arrangements to build resettlement capacity between established and new resettlement countries helped support this expansion. In addition, UNHCR signed a tripartite agreement with Romania and IOM in May 2008, enabling the temporary evacuation to Romania of refugees in danger of *refoulement* and other threats to their physical safety ahead of resettlement elsewhere. While welcoming these positive developments, the Office was concerned about discriminatory selection criteria adopted by some States which led to neglect of refugees needing resettlement, for instance, from Africa (contrary to UDHR, Article 2; 1951 Convention, Article 3).

VIII. CONCLUSION

59. This Note has shown how the Universal Declaration provides the underlying framework supporting persons of concern to secure non-discriminatory enjoyment of their rights, including, notably, the rights to seek and enjoy asylum, to a nationality and to return to one's country. It has also highlighted a few examples of how UNHCR and partners use international human rights and refugee law in complementary ways to support States in securing the rights of persons of concern, including by using a rights-based approach, by drawing on international human rights law standards in legal interventions and by using the human rights machinery to reinforce initiatives.

60. In bringing out the multifaceted linkages between international refugee and international human rights law,¹³ this year's Note points clearly towards the value of developing this complementary interface in mutually reinforcing ways. The further mainstreaming of human rights throughout the United Nations system, including UNHCR, and strengthened cooperation between relevant United Nations bodies, including the Office of the United Nations High Commissioner for Human Rights, can only reinforce the protection of persons of concern. Likewise, the systematic integration of issues relevant to persons of concern into the work of the human rights mechanisms,¹⁴ including the evolving Universal Periodic Review, affirms the applicability of that framework to their protection. It also helps clarify how human rights standards apply in practice to specific categories of people in the humanitarian context and how they help strengthen the legal framework underpinning the protection of persons of concern.

—

¹³ See also, Executive Committee Conclusion No. 90 (LII), 2001, para. (k).

¹⁴ Executive Committee Conclusion No. 95 (LIV), 2003, para. (l).