



UNHCR
The UN Refugee Agency

Commission Green Paper
on
A Community Return Policy on Illegal Residents

UNHCR's Comments

Geneva
July 2002

The Scope of the Challenge

1. UNHCR welcomes the Green Paper as an important contribution to the development of a Community return policy. Such a policy is an essential element of a Community migration management strategy. In the view of UNHCR, the paper addresses all relevant issues and is to be commended for situating the return issues within the wider context of a comprehensive Community immigration and asylum policy. From a UNHCR perspective, the emphasis on the responsibilities and needs of countries of origin and transit, the need for common standards for return procedures, the compatibility of a return strategy with asylum and admission policy, as well as the beneficiary effects of involving international organisations, is to be welcomed.
2. UNHCR is interested in this issue because it believes that the return of properly rejected asylum-seekers is an important condition for ensuring the integrity of the asylum system. By "properly rejected asylum-seekers", UNHCR means those who, after due consideration of their claims in fair procedures, have been found not to qualify for refugee status on the basis of the 1951 Convention, nor to be in need of protection on other grounds, including, but not exclusively, obligations under international human rights instruments, and who are not authorised to stay in the country concerned for other compelling reasons. For UNHCR, the key consideration is that the rejection has taken place in accordance with international protection standards, and that persons whose asylum applications have been rejected on purely formal grounds, such as the "*safe third country*" policy, will be ensured a substantive examination of their asylum claim somewhere.
3. UNHCR welcomes the approach taken by the Green paper which situates the return issue within the broader context of a comprehensive policy of migration management, bearing in mind the individual responsibilities of States of origin, transit and destination. Community return policies cannot be developed and implemented on their own, but must be conducted in conjunction with other policies, as stated in the Green paper. These include policies which create legal channels for labour migration which can contribute to reducing the pressures on the asylum system and preventing and combating migrant smuggling and human trafficking. Such complementary policies should also be aimed at strengthening the asylum system, i.a. by harmonising standards of treatment, creating subsidiary forms of protection, and developing services preparing for return. Most importantly, the Green paper recognises that readmission and return policies can only be effective if they are coupled with targeted development assistance for the sustainable reintegration of returnees. Although countries of origin have international legal obligations to take back their own nationals, compliance with such obligations is sometimes difficult to ensure and technical and financial assistance may be necessary to arrange for sustainable return and reintegration.
4. The preferred option for return is always voluntary return, also for unsuccessful asylum-seekers. Where forced return is necessary, it should be conducted with due regard for standards of safety and dignity. The proposal to draw up a Council Directive on minimum standards for return procedures is expected to include clear benchmarks for safe and dignified return and is thus to be welcomed.

The Legal Framework

5. Returns are best effectuated on the basis of bi- or multi-lateral agreements laying down rights and obligations of all actors concerned, and respecting the human rights of those to be returned. Readmission agreements with countries of origin should be phrased and implemented in a manner compatible with States' obligations under international refugee law and international human rights law, and respect the principle of non-*refoulement*. Due attention should also be given to the standards laid down by the UNHCR Executive Committee and other relevant bodies such as the Council of Europe¹.

6. The specimen re-admission agreement adopted by the Council of Justice and Home Affairs Ministers in November 1994 does include a clause to the effect that Member States' obligations arising from the 1951 Convention and the 1967 Protocol and other relevant international treaties will not be affected by the re-admission of those subject to the agreement, yet in regard to the readmission of third country nationals, it fails to differentiate between irregular migrants and persons seeking international protection. Where asylum-seekers would be returned under such agreements, without additional safeguards their protection claims risk not to be examined. This can best be avoided by explicitly excluding asylum-seekers from the scope of readmission agreements - as well as readmission clauses in co-operation agreements - and by establishing co-ordinated approaches to the allocation of State responsibility for determining refugee status.

Implementing returns

7. The Green paper recognises that individuals whose claims have been rejected on the basis of the 1951 Convention may be still otherwise in need of international protection and that therefore appropriate forms of subsidiary protection must be put in place. Returns should affect indeed only those who have been clearly determined not to be in need of any form of protection, including protection based on wider human rights standards.

8. UNHCR appreciates that the paper recalls that special rules apply for the protection against expulsion of recognised refugees, who can only be removed for grave reasons of national security or public order - a principle which the paper acknowledges.

9. UNHCR welcomes the proposals in the Green paper to develop common minimum rules and conditions for pre-removal detention, in particular accommodation standards, in order to ensure humane treatment, including provisions to subject such detention to regular judicial review, and, where possible, maximum time limits. UNHCR also welcomes the suggestion made in the paper to explore technical and legal alternatives for detention pending expulsion.

10. UNHCR also welcomes the suggestion made in the paper to develop common minimum rules for the enforcement of removals, inter alia on security standards for the removal itself, and the need to exercise restraint and define clear competencies of escorts. Prior to returning irregular residents and unsuccessful asylum-seekers, it is indispensable that their nationality be acknowledged by their country of origin and that corresponding

¹ Among these standards are Recommendation No. R (99) 12 of the Committee of Ministers of the Council of Europe, and EXCOM Conclusion No. 85 (XLIX) of 1998. Protocol No. 4 of the European Convention on Human Rights prohibits collective expulsions of aliens.

identification and travel documents be issued to them. It is appreciated that the paper refers to the physical and psychological condition of those to be returned, particularly those with special needs such as minors and separated children, and the risk of separating families as a result of expulsions as important factors to be taken into account when implementing returns.

11. UNHCR appreciates that the paper acknowledges that the actual situation in some countries of origin renders returns questionable, if not impossible, for compelling humanitarian reasons. UNHCR encourages Member States, in drawing up common assessments of the feasibility of removals to such problematic countries or regions, to seek the opinion of international organisations and other independent actors present on the humanitarian situation, absorption capacity or any other factors which may - temporarily - militate against return.

12. The Green paper lists a number of conditions which are to be met in order to render returns sustainable. These point at the necessity for comprehensive projects covering pre- and post-return assistance. The paper lists a number of relevant elements which would contribute to sustainable return and reintegration, such as pre-departure counselling and vocational training, the facilitation of contacts with families and friends in the country of origin, the establishment, where appropriate, of a monitoring presence in the country of return, the identification of the reintegration needs of potential returnees, and the involvement of the receiving local community in the return and reintegration, thus also being able to benefit from assistance measures.

13. Measures in which UNHCR, together with other relevant actors, could usefully assist EU Member States in the return of unsuccessful asylum-seekers, provided returns are voluntary, and depending on the particular situation, could include the following: systematic dissemination of information of developments in the country of origin as they affect the process of return; promoting voluntary return through collaborative counselling measures; identifying possible projects for post-return reintegration assistance; and in certain cases monitoring the situation of returnees once in their country of origin.

14. UNHCR can explore with EU Member States the possibility of extending, as appropriate and feasible, its programmes for the voluntary repatriation of refugees from neighbouring countries to unsuccessful asylum-seekers who are returned from EU Member States. The availability of repatriation and initial re-integration assistance provided by UNHCR in the country of origin may encourage unsuccessful asylum-seekers who have no right to remain in the asylum country to comply voluntarily with the obligation to return. Such assistance from UNHCR would be considered only in situations where the organisation implements a voluntary repatriation programme for refugees. Re-integration assistance given to returned unsuccessful asylum-seekers should be proportional to the often modest repatriation grants offered to refugees returning from the region. Where appropriate, reconstruction and development assistance could address, in addition to the needs of the local community, the specific situation of returnees, including returned unsuccessful asylum-seekers.

