

UNHCR'S REPLY TO THE QUESTIONNAIRE PREPARED  
BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
PURSUANT TO DECISION PC.1/10 OF THE PREPARATORY COMMITTEE  
OF THE DURBAN REVIEW CONFERENCE

I. INTRODUCTION

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) contributes to the debate and efforts to combat the challenges of discrimination, racism and xenophobia from the particular perspective of its mandates to provide international protection to refugees and to assist governments in finding durable solutions for them, and to prevent and reduce statelessness and protect stateless persons. Expressions of racism and xenophobia are relevant for UNHCR in several respects: (i) as major root causes of human displacement, (ii) as an obstacle for asylum-seekers to gain admission to safety and asylum procedures and protection against *refoulement*, (iii) as an obstacle for persons of a certain race, colour, descent, or national or ethnic origin to acquire and/or retain a nationality, (iv) as an obstacle for refugees and internally displaced persons in finding quality protection, entailing full enjoyment of their human rights, in their places of displacement, and (v) as an obstacle for refugees in finding durable solutions, in the form of sustainable return and reintegration in places of origin, successful local integration in countries of asylum, or resettlement in third countries.

2. UNHCR recognizes the value of the Durban Declaration and Programme of Action (DDPA) as a tool for the protection of persons of its concern, and disseminated the DDPA under a cover memorandum to its entire staff in early 2002. This communication highlighted the fact that the DDPA contains 16 refugee-related paragraphs which cover four main areas of interest to UNHCR: a) root causes; b) fair treatment; c) respect for refugees; and d) references to the 1951 Convention and its 1967 Protocol, and encouraged UNHCR offices to use the DDPA as a framework for advocacy and capacity-building activities in this area.

3. The challenges and concerns highlighted by the aforementioned 16 refugee-related paragraphs of the DDPA are as valid today as they were back in 2001. In addition, a number of new trends and challenges have been detected over the past seven years which are having a negative impact on the ability of persons of concern to UNHCR to enjoy quality protection and to find sustainable solutions. Hence, in responding to the questions which are of particular relevance to UNHCR's mandate and work, the Office will seek to reflect on contemporary expressions of racism, xenophobia and related intolerance affecting asylum-seekers, refugees and stateless persons.

II. CONTEMPORARY MANIFESTATIONS OF RACISM,  
RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE,  
AS THEY RELATE TO PERSONS OF CONCERN TO UNHCR

4. Racism, racial discrimination, xenophobia and related intolerance continue to be amongst the root causes of persecution leading to displacement, as well as to statelessness. In addition, several of the key contemporary challenges hampering UNHCR's ability to effectively carry out its mandate are direct or indirect manifestations of racism, racial discrimination, xenophobia and related intolerance against persons of concern. Some of these are outlined below.

5. Asylum-seekers are finding it **increasingly difficult to access territories and asylum** procedures due to tightened border security measures and restrictions on the issuance of visas for certain nationalities based on discriminatory grounds. Persons wishing to seek refugee protection are

therefore often compelled to employ the services of human smugglers, and may also, during the journey, be put in situations where they are at heightened risk of becoming trafficked.

6. UNHCR has observed a **diminishing of the ‘asylum space’**, *inter alia* through an increased use of the exclusion clauses included in Article 1F of the 1951 Convention, a broadened interpretation of these clauses, as well as an increased application of the exception to the principle of *non-refoulement* in Article 33(2) of the 1951 Convention. These trends have been highlighted in reports by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène (updated study on “Political platforms which promote or incite racial discrimination” of 25 May 2007, A/HRC/5/10), and the Special Rapporteur on the promotion and protection of human rights while countering terrorism (report A/62/263 of 15 August 2007).

7. UNHCR has witnessed some States taking a more restrictive interpretation of the refugee definition in the 1951 Convention, and introducing limitations on the duration of residence permits granted to refugees while adopting a more proactive use of the cessation clauses in the 1951 Convention. These measures are also contributing to a diminishing of the asylum space.

8. Refugees are moreover finding it difficult to **integrate locally** in their first countries of asylum, both because of time-limited residence permits which do not entitle their holders to enjoy all of the civil, economic and social rights needed to attain economic and social integration, and because the limited duration of the residence permits granted maintains refugees in a legal limbo without the ability to integrate as fully included members of society.

9. In the context of **resettlement** as one of the durable solutions for refugees, UNHCR is finding it increasingly difficult to identify resettlement countries for refugees coming from some countries or certain regions of the world due to a perception that they could pose a threat to national security. Some resettlement countries are also putting an increased focus on ‘integration potential’, where refugees of certain nationalities are viewed as being more difficult to integrate, or rather, assimilate.

10. While UNHCR would not claim that the root causes of all the aforementioned trends can be directly linked to racism, racial discrimination, xenophobia or related intolerance, these are clearly factors which have contributed to the emergence of these contemporary challenges and trends, as will be described below.

11. Using the conceptual framework developed by the Special Rapporteur on racism, Mr. Doudou Diène, UNHCR sees a link between the challenges outlined in the preceding paragraphs and individuals’, groups’ and even States’ fears for their personal security following the attacks on the World Trade Centre in September 2001, as well as concerns relating to the preservation of national identities versus multi-culturalism.

12. Since 9/11 and the launch of the **‘global war on terror’**, asylum-seekers and refugees have increasingly been labeled by States, the media, and the public in general as terrorists on account of their political, ethnic or religious affiliations or ties. This, in turn, has led to the perception by some States that the institution of asylum may provide a safe haven for terrorists. As explained in paragraph 6 above, this has, in some countries of asylum, resulted in an extensive use of the exclusion clauses and the exception to the principle of *non-refoulement*. The ‘global war on terror’ is also one of the factors which have led to tightened border security measures and restrictions on the issuance of visas in an attempt by States to protect their borders and territories. These measures have made it increasingly difficult for asylum-seekers to access territories in order to seek

protection. UNHCR welcomes the attention given by the Special Rapporteurs on racism and on the promotion and protection of human rights, while countering terrorism to these concerns, and hopes that the impact of the ‘global war on terror’ on asylum-seekers and refugees, who are often themselves the victims of terror, will be raised in the context of the Durban Review process.

13. UNHCR also sees a link between fears that large numbers of foreigners, including asylum-seekers and refugees, in a country may **threaten the national identity** and the introduction of restrictive asylum policies in all of the aspects outlined above, including in regard to States’ unwillingness to allow refugees to integrate in a long-term perspective.

14. Like the Special Rapporteur on racism, Mr. Doudou Diène, UNHCR has witnessed how politicians have instrumentalized peoples’ feeling of insecurity, especially following 9/11, and fears towards the ‘unknown foreigner’, and played on the concept of national identities by, *inter alia*, promoting assimilation rather than integration in a multi-cultural society. This **political instrumentalization** of racism and xenophobia is, for example, being played out in pre-election campaigns where some political candidates portray asylum-seekers and refugees as criminals who contribute to a deterioration of social values and threaten the national security, and therefore promise to tighten borders and decrease the asylum space.

15. The **media** has also played on these fears by depicting asylum-seekers and refugees as a category of persons with many negative traits. UNHCR regrets that this trend, which was referred to in paragraph 89 of the Durban Declaration, seems to have increased rather than decreased since 2001.

16. UNHCR is also very concerned about **violent attacks** against foreigners, including asylum-seekers and refugees in some countries of asylum. While the Office has not conducted an analysis to assess whether the number of such violent attacks against persons of concern has increased, decreased or remained the same since 2001, it is still a problem of great concern.

17. In the context of UNHCR’s statelessness mandate, the Office would like to highlight that deprivation of nationality is often a result of racism. Indeed, the Human Rights Council recently adopted a Resolution "[e]xpressing its deep concern at the arbitrary deprivation of persons or groups of persons of their nationality, especially on racial, national, ethnic, religious, gender or political grounds". Similarly, UNHCR’s Executive Committee has noted that statelessness may arise as a result of deprivation of nationality resulting from discriminatory practices (Executive Committee Conclusion No. 106 (LVII)-2006). Hence, as made clear by the 2007 report of the Independent Expert on Minority Issues, Ms. Gay McDougall (A/HRC/7/23 of 28 February 2008), most stateless persons around the world belong to linguistic, religious or ethnic minorities. Fortunately, a number of States have taken positive steps in recent years to address protracted statelessness situations affecting minority populations. For example, a number of States have amended their legislation and conducted citizenship campaigns such that stateless persons have been able to acquire or reacquire nationality.

### III. EXAMPLES OF UNHCR INITIATIVES AND MEASURES, INCLUDING GOOD PRACTICES, AIMED AT COMBATING RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, AGAINST PERSONS OF CONCERN TO UNHCR

18. The paragraphs below outline some of the categories and types of activities which UNHCR has undertaken or continues to undertake with a view to combating racism, racial discrimination, xenophobia and related intolerance against persons of concern to UNHCR, including how these

expressions are manifesting themselves into contemporary challenges to UNHCR's protection mandate.

19. In terms of **public awareness and information strategies and activities**, it should be noted that UNHCR devoted an issue in 2006 of its Refugees Magazine to the theme "Victims of Intolerance" <http://www.unhcr.org/publ/PUBL/44508c182.pdf>. This issue provides many examples of the types of headlines which have appeared in newspapers, some of which could clearly incite violence and racist attacks against asylum-seekers and refugees. UNHCR is also in the process of developing a Global Communications Strategy which, amongst other things, will strive to change the negative image of refugees conveyed by some politicians and media, and to sensitize the public to the plight of refugees and the positive contributions these individuals could make to their new societies if given the chance.

20. UNHCR's Executive Committee adopted by consensus in 2005, Conclusion No. 104 (LVI) on Local Integration. This is one example of a recent **policy and standard-setting document** which, *inter alia*, emphasizes the importance of the values of diversity, non-discrimination and tolerance for the local integration process to succeed and encourages the implementation of anti-discrimination policies and awareness-raising activities aimed at combating institutionalized discrimination and promoting the positive aspects of a diverse society (OP(n)). Preambular paragraph nine of the ExCom Conclusion highlights that "*local integration in the refugee context is a dynamic and multifaceted two-way process, which requires efforts by all parties concerned, including a preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and to meet the needs of a diverse population*".

21. Another key message of the ExCom Conclusion is found in operational paragraph (k), in which the Executive Committee "*Acknowledges that the process of local integration is complex and gradual, comprising three distinct but inter-related legal, economic, and social and cultural dimensions, all of which are important for refugees' ability to integrate successfully as fully included members of society*". The reference to "fully included members of society" is, in UNHCR's view, central. Refugees who are given a secure legal status and durable residency rights, and are embraced by their new communities as equal members of society with equal rights and obligations, are more likely to feel welcomed and motivated to integrate. In pursuance of this aim, UNHCR is **advocating** for refugees to get full access to the rights they are entitled to enjoy under international refugee and human rights law instruments. Furthermore, the Office encourages States to grant durable residence permits to recognized refugees.

22. UNHCR is also heavily engaged in activities aimed at **developing the capacity** of States to receive and protect refugees. Such activities include support to national legislative bodies in drafting legislation impacting on asylum-seekers' and refugees' right to seek and enjoy asylum and to enjoy other rights in a non-discriminatory manner, and training of government officials, the media and other partners working with refugees on topics relating to non-discrimination and the 'refugee-experience'.

23. Furthermore, UNHCR gives **support to individuals** who are victims of crimes motivated by racism or xenophobia, for example through the provision of legal aid and counseling.

24. Within the **UN human rights framework**, UNHCR, *inter alia*, contributes to the work of the Committee on the Elimination of Racial Discrimination (CERD): for example, the Office assisted in the efforts which led to General Recommendation 30 on Discrimination against Non-citizens. UNHCR has also supported the affirmation by the Human Rights Committee (CCPR) and

the Committee on the Rights of the Child (CRC) in their respective General Comments No. 31 (CCPR) and No. 6 (CRC), that States parties to these Conventions are required to respect and to ensure the Convention rights to all persons who may be within their territory and to all persons subject to their jurisdiction. UNHCR also supports the work of the Special Rapporteur on racism and urges the holder of this mandate to continue assessing how expressions of racism, racial discrimination, xenophobia and related intolerance are manifesting themselves in regard to asylum-seekers, refugees, returnees, stateless persons and internally displaced persons of concern to UNHCR.

25. As a means of supporting sustainable reintegration of refugees, UNHCR **promotes community coexistence** as a first step towards reconciliation. For example, UNHCR launched in 2000 a pilot project, in returnee areas of Rwanda and Bosnia and Herzegovina, called "Imagine Coexistence", consisting essentially of support to small, community-based inter-ethnic income-generating activities, around which clusters of other activities branching off into the community - sports, theatre, culture, dialogue - were built.

#### IV. STEPS THAT SHOULD BE TAKEN TO RATIFY AND/OR IMPLEMENT THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

26. UNHCR hopes that the Universal Periodic Review (UPR) process will be one vehicle for promoting universal ratification of the ICERD.

27. In terms of implementation, UNHCR supports the work of the CERD in monitoring States parties' compliance with the ICERD, in their national legislation and practice. For persons of concern to UNHCR, it is of utmost importance that the guidance contained in General Recommendation No. 30 is fully implemented. UNHCR therefore urges the CERD to continue its practice of consistently considering the extent to which the rights in the ICERD are being enjoyed by asylum-seekers, refugees, and stateless persons in its review of State reports, and to make recommendations on how national legislative frameworks and/or applications of such require amendment in order to ensure compliance with the ICERD.

28. In regard to the prevention and reduction of statelessness and the right to a nationality, Governments are encouraged to adopt legislative and administrative measures to prevent statelessness, as statelessness often results from, and exacerbates, discrimination. Cases of statelessness which do occur should be addressed through legal reforms which permit acquisition of nationality by individuals and populations who have an appropriate connection to the State, and through other practical measures such as citizenship campaigns. Acting under its mandate to prevent and reduce statelessness and protect the rights of stateless persons, UNHCR stands ready to provide advice and support to States in designing and implementing these measures.