

UNHCR Contributions

Report to the General Assembly on the implementation of Resolution A/RES/69/167 on the Protection of Migrants

Terminology related comments

UNHCR would like to highlight that the international protection principles derived from the International Human Rights Treaties apply to all persons present on the territory or placed under the jurisdiction of a State, irrespective of their immigration, legal situation, personal status, or circumstances. This concerns not only migrants, but also those protected under other specific international human rights instruments such as asylum-seekers, refugees and stateless persons.

From a refugee protection perspective in the context of mixed migration, it is important to note that the distinction between migrants and refugees is critical, in particular in the normative context given the obligations that arise from an established legal refugee protection regime. Refugees are a distinct category of people with unique legal status under international law that must be maintained and respected due to their cause of flight which is related to persecution and/ or armed conflict. The fundamental distinction between those who are forcibly displaced (and often irregularly so) to seek asylum and protection, and those who migrate for other reasons must be reflected also in the terminology that is being used in the report to be submitted to the General Assembly pursuant to paragraph 17 of the General Assembly Resolution A/RES/69/167 on the Protection of migrants.

1. Context : increasing mixed migration flows

Recent tragedies at sea have brought into focus the longstanding phenomenon of refugees, asylum-seekers, stateless persons and migrants risking their lives to make perilous sea journeys in their desperate search for asylum and protection. Despite the dangers involved, these movements continue across the globe: in the Mediterranean, the Gulf of Aden and the Red Sea, the Caribbean, the Bay of Bengal and throughout Southeast Asia and the South Pacific.

In many regions, the numbers of people fleeing by sea appear to have significantly increased in 2014 and these numbers are further on the rise as evidenced in the first half of 2015. The incidence of violence, exploitation, abduction and trafficking en route or on arrival appears to be rising as do incidents of deaths at sea. Increased numbers of women and unaccompanied or separated children travelling irregularly by sea are also cause for concern for their protection.

There have been notable positive efforts by States and regions to respond to these challenges, but also examples of practices that recall the need to ensure that responses to mixed migration flows do not take a form that jeopardizes access to protection for those who need it. State responses to migration through border closure, restricted access, arbitrary detention and other barriers and deterrents to admission can have a direct impact on access to asylum processes and protection for those in need.

2. Protection at sea

There are concerns at the continuing and in some instances increased use of “pushbacks”, “tow backs” or other forms of maritime interdiction by some States in the Asia-Pacific, the Mediterranean and Aegean Seas, and the Caribbean. These practices risk endangering life at sea or result in the return of people travelling by sea to places where their lives or freedom may be threatened, in breach of the *non-refoulement* principle. The use of interceptions to shift burdens or frustrate the ability of asylum-seekers, refugees and stateless persons to seek safety and protection are also concerning.

- In this context, UNHCR calls for concrete actions to be taken to strengthen search and rescue (SAR), allow disembarkation and establish or enhance reception facilities so that the basic human needs of people involved in mixed movements can be met.
- Increasing legal alternatives to access protection, including more opportunities for resettlement and humanitarian admission, enhanced family reunification, humanitarian visas, private sponsorships schemes, and work and study visas for people in need of international

protection is urgently needed to protect refugees and migrants from falling prey to smugglers and traffickers.

3. Access to territory

While there are many legitimate measures taken by governments to prevent and respond to the phenomenon of irregular migration, their non-discriminatory application can mean that asylum-seekers and refugees are denied access to asylum and other fundamental rights critical to their protection. Securing access to territory and protection, especially in the context of mixed migratory movements, remained a global challenge. The principle of *non-refoulement*, the cornerstone of international protection and a norm of customary international law, has not always been respected.

- Protection safeguards are required to ensure that such measures are not applied in an indiscriminate or disproportionate manner and that they do not lead to *refoulement*. In this context, UNHCR advocates for the establishment of protection-sensitive entry systems at international borders to allow for the identification of vulnerable people and their speedy referral to appropriate procedures and processes.

4. Protection responses to differentiated needs

Mechanisms to differentiate between various categories of persons soon after they arrive in a host State is critical for protection and can facilitate management of mixed movements, especially those involving large-scale arrivals. Such mechanisms can ensure that asylum-seekers and other individuals with specific needs (i.e. asylum-seekers and refugees, unaccompanied children, victims of trafficking, women and girls at risk, persons who have survived torture, persons with physical and mental disabilities, older persons and stateless) are quickly identified and their protection and other needs are addressed.

- With regards to persons seeking international protection, it is essential that they have access to fair and judicious asylum procedures, and that the principle of *non-refoulement* is respected.

5. Protection from immigration detention

In many states the routine detention of asylum-seekers, refugees, stateless persons, and migrants for immigration related purposes posed another major threat to their security and rights. UNHCR considers that the immigration detention of asylum-seekers and refugees should be a measure of last resort.

- With regards to refugees and asylum-seekers, it is essential that the principle of non-sanction for illegal entry or stay (article 31 of the 1951 Refugee Convention) is respected and applied.
- It is essential also to ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards by, *inter alia*, securing access to places of immigration detention for UNHCR and/or its partners and carrying out regular monitoring.

6. Trafficking in Persons

Many persons travelling as part of mixed migration flows are at risk of abuse and fall victim to traffickers, adding to the dangers they face in search of safety. UNHCR continues to support State and other stakeholder responses to address the impact of trafficking in human beings, especially with regard to asylum-seekers, refugees and stateless persons who are often the most vulnerable. UNHCR operations have integrated response to trafficking in persons as part of their protection response mechanisms globally. In Sudan, Ethiopia, Costa Rica and Panama UNHCR supports the development of national strategies against trafficking, abduction, smuggling and exploitation of migrants. Coordinated approaches are being developed at regional and sub-regional levels including through mixed migration task forces, studies, research, information campaigns and other inter-agency initiatives.

7. Refugees and the right to work

UNHCR recognizes the right to work as a fundamental right, enshrined in the 1951 Convention/ Human Rights treaties. For refugees, it is essential for the re-establishment of a normal life and is also an imperative need for asylum-seekers while awaiting access to asylum systems or while in process of being assessed. In some contexts, refugees may have indeed acquired the “right to work” in the country of asylum, or in a third country. However, restrictions on the access to the labour market for refugees and asylum-seekers are still far too common, including in countries that are parties to the Refugee Convention. As a consequence, in many States refugees may be working in the informal sectors, most often performing what we call the “3D” jobs (dirty, dangerous, and difficult), with high risks of exploitation.

- It is essential that refugees and asylum-seekers are given access to labour markets. Finding paid employment or establishing businesses would not only contribute to move refugees out of extreme poverty and provide opportunities for them to make a safe and sustainable living; it could also reduce the incentives to undertake dangerous irregular onward movement, often at high risk, to other destinations where refugees think they could get work opportunities.
- Access to the regular labour market would also contribute to protect refugees and asylum-seekers against the risk of abuses and exploitation. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, for instance, contains some important safeguards for the protection of “refugee workers”, irrespective of their legal status (regular or irregular).

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