

9th session of the Ad Hoc Committee on the Elaboration of Complementary Standards to the International Convention on the Elimination of Racial Discrimination

Panel discussion on "Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices"

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Context

- As of mid-2016, an estimated 61.5 million persons were forcibly displaced around the world, including approximately 21 million refugees and 37 million internally displaced people (as well as asylum-seekers, returnees and others falling under UNHCR's mandate). These numbers are among the highest in recent years in some regions and countries, and asylum and migratory pressures that some States are facing are having a significant impact upon the public discourse as well as political debate and actions. This is noteworthy in several European countries, although the numbers of forcibly displaced people in Europe, in absolute and relative terms, are a fraction of those hosted by other less well-resourced regions of the world. (In fact, close to 90% of the global refugee population is hosted in middle and low-income countries).
- Increasing concerns in some countries about security and integration capacity can exacerbate racism and xenophobia, thus worsening the already precarious situations of those forced to flee. We have lately witnessed a proliferation of xenophobic narratives, hate speech and inflammatory statements directed against refugees and migrants. Not only has this threatened to undermine the institution of asylum, but also at times has even led to violence against refugees (and migrants).

UNHCR's interest in issues related to racism and xenophobia

- UNHCR has a special interest in and commitment to reducing racism and xenophobia. This stems from the fact that racism and related intolerance and xenophobia are common causes of forced displacement, but can also compromise the protection afforded to asylum-seekers and refugees at different stages of the displacement cycle. For instance, they can be manifested through official restrictions on access to asylum or inadequate standards of treatment afforded to those seeking asylum or recognized as refugees. Asylum-seekers and refugees may be denied the full enjoyment of human rights in the host country, such as equal access to public services. This can hamper the achievement of durable solutions, by hindering integration in the receiving societies. Furthermore, voluntary return by refugees to their countries of origin is less viable and sustainable option if it takes place in conditions where peace is fragile and ethnic, religious or other forms of discrimination persist.
- At the same time, it is important to recall that discrimination on the basis of race, color, descent, or national or ethnic origin, among other grounds, is also a reason for the denial or deprivation of nationality, and is therefore a cause of statelessness in many cases. The majority of the world's estimated 10 million stateless people belong to minority groups. At least 20 countries maintain

laws which deny or permit the withdrawal of nationality on the grounds of ethnicity, race, or origin. As the organization mandated by the UN General Assembly, together with States, to identify and protect the rights of stateless people, and prevent and reduce statelessness around the world, UNHCR sees a pressing need for greater acknowledgement and action to address discrimination where it leads to the injustice and hardship of statelessness.

- UNHCR thus welcomes the opportunity to take part in this hearing, and to speak with the members of the Committee about the legal and practical tools at our disposal to address the manifold challenges associated with racism and xenophobia in many contexts today. The principle of non-discrimination is articulated in the 1951 Convention Relating to the Status of Refugees, which in its Article 3 binds States Parties to apply its provisions without discrimination as to race, religion or country of origin. Subsequent multilateral instruments - including notably the International Convention on the Elimination of Racial Discrimination (**ICERD**) - have elaborated and developed further in crucial ways the content of this principle and the specific obligations of states to refrain from and prevent discrimination, including where it affects asylum-seekers, refugees, stateless persons and others under UNHCR's mandate. The standards which exist in international law at present, in our view, provide a solid framework for protection against discrimination in its many forms today. The challenge, in our view, is to ensure more effective observance of these standards in practice. This can be done, among other ways through training and ensuring accountability of state officials and organs; through processes for enforcing anti-discrimination rules; and through initiatives to foster tolerance and inclusiveness, as well as countering racist and discriminatory attitudes, rhetoric and actions. In my remarks, I will elaborate on a number of tools and elements that can contribute to these goals.

How to address the particular vulnerabilities of refugees and asylum-seekers to racist and xenophobic attitudes

- Many manifestations of racism and xenophobia are not directed against asylum-seekers or refugees, *per se*, but against non-nationals more broadly. However, refugees, asylum-seekers and members of minorities¹ may be particularly vulnerable to the effects of discrimination due to a less secure legal status or the absence of a supportive network in society. Some extremist political parties, movements and groups may also explicitly incite discrimination against new arrivals, by unjustifiably blaming them for wider social problems.
- Refugees, asylum-seekers, stateless and internally displaced persons, due to their specific protection needs and vulnerabilities, can suffer **multiple forms of discrimination**, and may become victims of rejection, stigmatization, exclusion, or even violent attacks.² Many children report little positive contact with host communities in their countries of asylum, but rather negative experiences of xenophobia, racism and discrimination. There is evidence that such

¹ UN High Commissioner for Refugees (UNHCR), *UNHCR's contribution to the Secretary-General's report with recommendations on global trends in the fight against racism, racial discrimination, xenophobia, and related intolerance to the General Assembly for its 66th session pursuant to A/RES/64/148*, June 2011, available at: <http://www.refworld.org/docid/4e02d33f2.html> [accessed 19 April 2017]

² UN High Commissioner for Refugees (UNHCR), *UNHCR's contribution to the Secretary-General's report with recommendations on global trends in the fight against racism, racial discrimination, xenophobia, and related intolerance to the General Assembly for its 66th session pursuant to A/RES/64/148*, June 2011, available at: <http://www.refworld.org/docid/4e02d33f2.html> [accessed 19 April 2017]

experiences, coupled with other hardships of forced displacement, can increase young refugees' vulnerability to recruitment by or victimization at the hands of gangs, other criminal groups and radical extremists.³

- Institutionally, the protective role of the **ICERD** is more critical than ever in addressing elimination of racial discrimination, promoting understanding, outlawing hate speech, and criminalizing membership in racist organizations. Parties to the CERD Convention are obliged to review and amend their laws and policies to ensure that they do not discriminate on the basis of race, and to guarantee the right of everyone to equality before the law regardless of race, color, or national or ethnic origin. Additionally, the Committee's *General Recommendation No. 30* provides guidance to States where it elaborates in particular on the relevance of the ICERD for non-citizens.
- The near-universal acceptance by the international community of the ICERD is a testament to its importance – and impact in law, even if many challenges remain in practice. Many States parties have adopted legislation outlawing racial discrimination in the workplace or in the provision of services, such as housing and education.
- **UNHCR further recognizes the value of the Durban Declaration and Programme of Action (DDPA)** as an important international platform for the fight against racism, xenophobia, and related intolerance and for reaffirming the right of all individuals - regardless of their legal status or nationality – i.e. to equal enjoyment of the civil, political, economic, social, and cultural rights set out in international human rights instruments. The 16⁴ paragraphs in the DDPA, which made specific reference to forcibly displaced and stateless persons, are of particular importance for the promotion of UNHCR's work to protect refugees, asylum-seekers, returnees, stateless and internally displaced persons.⁵
- UNHCR promotes the strategic use of human rights mechanisms and uses their recommendations as protection advocacy tools. Recommendations to States on measures needed to eradicate discrimination, including against persons of concern to UNHCR, are regularly adopted by other treaty-monitoring bodies, such as the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) and by the Human Rights Council through its Universal Periodic Review (UPR) mechanism. Special

³ UN High Commissioner for Refugees (UNHCR), *High Commissioner's Dialogue on Protection Challenges: Children on the Move - Background Paper*, 28 November 2016, available at: <http://www.refworld.org/docid/5846cffb4.html> [accessed 19 April 2017]. This section draws, inter alia, from: UNHCR and Women's Refugee Commission, *We Believe in Youth. Global Refugee Youth Consultations Final Report*, September 2016 and individual reports on consultations in Chad, Ecuador, Jordan, Uganda and elsewhere; UNHCR and the Joint IDP Profiling Service, *This is Who We Are*, October 2016; UNHCR, *I Am Here, I Belong: The Urgent Need to End Childhood Statelessness*, 3 November 2015; UNHCR participatory assessments with children conducted by various offices worldwide; Save the Children and UNICEF, *Consultation with Children in East Africa for the World Humanitarian Summit. Messages from Children Affected by Emergencies*, July 2015; and the European Union Agency for Fundamental Rights report of December 2010, entitled *Separated, asylum-seeking children in European Union Member States*. For the purposes of this paper, we have included concerns expressed by youth, who were in many cases displaced when they were still children, and who provided information about their experience of being displaced children.

⁴ Paragraphs in the Declaration: 16, 28, 52-55, 65, 89 and 111. Paragraphs in the Programme of Action: 34-36, 78(d), 138, 144(e) and 185.

⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR's contribution to the Secretary-General's report with recommendations on global trends in the fight against racism, racial discrimination, xenophobia, and related intolerance to the General Assembly for its 66th session pursuant to A/RES/64/148*, June 2011, available at: <http://www.refworld.org/docid/4e02d33f2.html> [accessed 19 April 2017]

Procedures, such the Special Rapporteur on Racism and the Special Rapporteur on freedom of religion or belief following country visits, also adopt recommendations on measures States are advised to take to ensure that all persons, regardless of their race, ethnicity or other protected characteristic, are equally able to enjoy their human rights.⁶

- There is nevertheless more that States can do to act in the spirit of the CERD Convention and the Durban Declaration. Global refugee numbers, and the higher number of arrivals in numerous individual countries worldwide, have underscored the need for States to develop efficient and effective, longer-term multi-stakeholder strategies and programmes which truly facilitate refugees' inclusion and self-sustainability.⁷ The Durban Declaration and Programme of Action and the Outcome Document urge States to develop national action plans, to monitor their implementation in consultation with relevant stakeholders and to establish national programmes that facilitate the access of all, without discrimination, to basic social services. The Outcome Document also recommends that States establish mechanisms to collect, analyse and disseminate reliable and disaggregated statistical data and that they set up independent bodies to receive complaints from victims.⁸
 - For instance, more can be done effectively and comprehensively to train law enforcement, immigration, and border officials. Such training should aim to sensitize them to racism, racial discrimination, xenophobia and related intolerance, but also make clear their legal obligations to take or refrain from taking certain actions, as agents of the State.
 - More concerted action is needed to counter xenophobic attitudes and negative stereotypes directed against non-citizens by politicians, law enforcement, immigration officials, and the media, and grant refugees non-discriminatory access to services. Swift access to rights and services which can address the needs of newly-arriving asylum-seekers is also essential to facilitating integration of those who will be found to be refugees. IN addition, however, it has the potential to influence positively the perceptions of local communities and counter racist or xenophobic attitudes, by enabling refugees to contribute positively and actively to their communities at any early stage.
 - Law enforcement officers are key actors in preventing and responding to bias motivated crimes. Police officers are the primary and initial point of contact for many victims of hate crime. It is, therefore, important that police officers understand how the police-victim interaction can influence whether victims report hate crimes or not. Often, they do not report such crimes because of fear of police, embarrassment, or concern that the incident will not be taken seriously. Training for law enforcement officials and clear guidelines regarding the most effective and appropriate ways to respond to bias-motivated crime can greatly improve

⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR's contribution to the Secretary-General's report with recommendations on global trends in the fight against racism, racial discrimination, xenophobia, and related intolerance to the General Assembly for its 66th session pursuant to A/RES/64/148*, June 2011, available at: <http://www.refworld.org/docid/4e02d33f2.html> [accessed 19 April 2017]

⁷ UN High Commissioner for Refugees (UNHCR), *Integration of refugees in Estonia - Participation and Empowerment*, December 2016, available at: <http://www.refworld.org/docid/586e251d4.html> [accessed 19 April 2017]

⁸ UN High Commissioner for Refugees (UNHCR), *Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance through a Strategic Approach*, December 2009, available at: <http://www.refworld.org/docid/4b30931d2.html> [accessed 19 April 2017].

- interaction between police and victims, and encourage reporting of hate crimes by victims.⁹
- UNHCR and its partners can conduct awareness-raising activities for the police, prosecutors and judges and provide guidance on international and regional human rights standards in this area. Moreover, UNHCR gives direct support to individuals who are victims of crimes motivated by racism or xenophobia, such as by providing legal aid and counseling.¹⁰ Other measures which can ensure that victims of crimes motivated by racism or xenophobia have an effective remedy, could be through the provision of free legal counsel for victims of such crimes and by establishing National Human Rights Institutes, an Ombudsman or other mechanisms which would have a monitoring power and the ability to receive complaints. Also, specialized governmental bodies can be set up to investigate and / or prosecute these specific crimes, or prosecutors can be given a special responsibility for enforcement of laws prohibiting racial discrimination.
 - The logic of exclusion also reinforces the perception of refugees as a burden, and risks encouraging xenophobic and racist rhetoric. It may even prompt physical or psychological attacks against the very individuals fleeing persecution. A growing number of studies indicate that host societies benefit tremendously from the presence and contributions of refugees – economically, socially, and culturally. A report by the Organization for Economic cooperation and Development (OECD), for example, presents the main lessons from the experience of OECD countries in fostering the integration of refugees, and it emphasizes, among other things, the importance of providing access to language courses, employment programs, and integration services as soon as possible, including for asylum-seekers who are highly likely to remain. Providing refugees and their family members with rights and opportunities that enable them to play a full role in the social, economic, and cultural life of their host countries is key to facilitating integration.
 - In March 2016, together with the OECD, UNHCR organized a high-level meeting on integration, in order **to counter myths** and use research evidence to demonstrate how refugees can benefit economies, as well as to make the case for early investment in refugees' integration and social inclusion..¹¹
 - In any event, it is clear that greater efforts are required from all concerned parties – States, the UN and other international and regional organizations, as well as NGOs and community groups - to address these challenges. The success of any such effort will be directly proportional to the political will of States to put in place systems for the protection of basic rights and mechanisms for ensuring their effective implementation. This needs to be complemented by activities aimed

⁹ UN High Commissioner for Refugees (UNHCR), *Protection from Xenophobia: An Evaluation of UNHCR's Regional Office for Southern Africa's Xenophobia Related Programmes*, February 2015, available at: <http://www.refworld.org/docid/55d2e1be4.html> [accessed 25 April 2017]

¹⁰ UN High Commissioner for Refugees (UNHCR), *UNHCR's contribution to the Secretary-General's report with recommendations on global trends in the fight against racism, racial discrimination, xenophobia, and related intolerance to the General Assembly for its 66th session pursuant to A/RES/64/148*, June 2011, available at: <http://www.refworld.org/docid/4e02d33f2.html> [accessed 19 April 2017]

¹¹ UN High Commissioner for Refugees (UNHCR), *67th Session of the Executive Committee of the High Commissioner's Programme Agenda point 4(a) - Statement by Volker Türk, Assistant High Commissioner for Protection*, 5 October 2016, available at: <http://www.refworld.org/docid/57f655a04.html> [accessed 19 April 2017]

at preventing racist and intolerant attitudes from developing, such as human rights education and public information campaigns to promote respect and tolerance.

- UNHCR can provide support to partners in initiating public awareness campaigns in host communities in order to promote tolerance, and combat racism and xenophobia. Information strategies targeted at sensitizing host communities may include projects to better inform communities about the root causes of mixed movements and the human suffering involved.¹²
 - For instance, several countries, in cooperation with UNHCR, have launched creative awareness-raising campaigns to “roll back xenophobia”, and a number of regional organizations are implementing programs that promote tolerance towards, and respect for, foreigners including refugees. NGOs and civil society have played a vital role in raising awareness about this issue, highlighting abuses as they occur, lobbying for change, and providing training and advice.
 - By way of **good practices**, the “Diversity Initiative”¹³ in **Ukraine** is one example of the beneficial impact of partnership and complementary action to combat xenophobia and intolerance. This initiative was launched by UNHCR, IOM, Amnesty International and a number of other civil society organizations in 2007 in response to a rise in hate crimes in Ukraine.¹⁴
 - **Government institutions and officials** are also both key partners in the fight against discrimination and a target group for awareness-raising activities and advocacy. UNHCR and partners have produced a number of tools which can help in developing strategies for **establishing common ground and raising awareness**. These include joint **IPU-UNHCR handbooks for parliamentarians** on “Human Rights”¹⁵ (2016), “Migration, human rights and governance”¹⁶ (2015), “Nationality and Statelessness”¹⁷ (2014) and “Refugee Protection: A Guide to International Refugee Law”¹⁸ (2001) – soon to be issued in an updated edition - as well as the IPU Resolution on “Migrant Workers, People Trafficking, Xenophobia and Human Rights”¹⁹ (2008)²⁰
 - For its part, the UN has also recently launched the “**TOGETHER**” global initiative, that promotes respect, safety and dignity for everyone forced to flee their homes in search of a better life. UNHCR contributes to it through its **#WithRefugees** campaign and petition, which aims to mobilize the public to stand in solidarity with refugees while at the same time increasing empathy, understanding and engendering respect for all people forced to flee.
- It also needs to be emphasized that (in line with element six of UNHCR’s Strategic Note), real

¹² UN High Commissioner for Refugees (UNHCR), *The 10-Point Plan in Action, 2016 Update, Chapter 10: Information Strategy*, December 2016, available at: <http://www.refworld.org/docid/58208fdc4.html> [accessed 19 April 2017]

¹³ See also: <http://www.diversipedia.org.ua/en/about-diversity-initiative>.

¹⁴ UN High Commissioner for Refugees (UNHCR), *Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance through a Strategic Approach*, December 2009, available at: <http://www.refworld.org/docid/4b30931d2.html> [accessed 19 April 2017].

¹⁵ Available online at: <http://www.ipu.org/PDF/publications/hrights-en.pdf>.

¹⁶ Available online at: <http://www.ipu.org/PDF/publications/migration-en.pdf>.

¹⁷ Available online at: http://www.ipu.org/PDF/publications/statelessness_en.pdf.

¹⁸ Available online at: <http://www.unhcr.org/3d4aba564.pdf>.

¹⁹ Resolution adopted by the 118 IPU Assembly that met in Cape Town, 18 April 2008. Available online at: <http://www.ipu.org/english/structure/confdocs/118/118-3.htm>.

²⁰ UN High Commissioner for Refugees (UNHCR), *Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance through a Strategic Approach*, December 2009, available at: <http://www.refworld.org/docid/4b30931d2.html> [accessed 19 April 2017].

partnership with **persons of concern to UNHCR and their communities is essential** in addressing racism, xenophobia and intolerance. This is, after all, about their experiences and their lives, in too many cases. People of different genders, children, adolescents, persons with disabilities and members of minority groups or indigenous communities have different perspectives and capacities to contribute to this vital work. **They need to be engaged in all stages**, from development of any strategic approach for a particular national or local context, through its implementation. The most effective way to eradicate fear of 'the other' is typically through personal encounters and interaction.²¹

- Examples of **good practices** when it comes to the involvement of **youth**, are the "Lo que nos une" (What unites us) campaign in **Ecuador** initiated by the refugee and host community; **New Zealand's** National Refugee Youth Council, run by refugee youth, which aims to address issues faced by refugee youth by helping newly arrived refugee youth realize their full potential and successfully integrate into NZ culture. There are also youth who participated in the UNHCR and civil society-led Global Refugee Youth Consultation in **Uganda** in 2016, who wrote a report on the consultation findings with the Office of the Prime Minister. As a result, the settlement in which they live agreed to involve youth in local decision making.²²

Also with the "Long Day of Flight" initiative in **Austria**, UNHCR (together with NGO's, the private sector and refugees) seeks to destigmatize asylum and flight and humanize asylum-seekers and other people on the move, through the use of sports, visual arts and engagement in other cultural fields.²³

- It is evident that if all of those who are concerned – wherever they stand - are to overcome toxic public debates and divisive politics and prevent xenophobia from gaining traction, we will need a more concerted, comprehensive and proactive approach to refugee situations. The unanimous adoption of the New York Declaration for Refugees and Migrants by UN member States last September was a clear acknowledgment of this imperative. The Global Compact on Refugees envisaged in the New York Declaration will aim to ensure equitable and predictable responsibility-sharing arrangements to address both large-scale movements of refugees and protracted refugee situations. At its core will lie the principle of international cooperation, which is key to ensure global stability, building public confidence in our institutions, and bolstering refugee protection.
- There are in practice many common features of the experiences of refugees and migrants, including the risks they face from rising xenophobia. This requires the forging of stronger linkages and a further exchange of expertise between the fields of refugee protection and migration. The process leading toward a **Global Compact on Safe, Orderly and Regular Migration** in 2018 will provide an opportunity for exploring further the interface between migration and forced

²¹ UN High Commissioner for Refugees (UNHCR), *UNHCR's contribution to the Secretary-General's report with recommendations on global trends in the fight against racism, racial discrimination, xenophobia, and related intolerance to the General Assembly for its 66th session pursuant to A/RES/64/148*, June 2011, available at: <http://www.refworld.org/docid/4e02d33f2.html> [accessed 19 April 2017]

²² UN High Commissioner for Refugees (UNHCR), *"We Believe in Youth" - Global Refugee Youth Consultations Final Report*, 19 September 2016, available at: <http://www.refworld.org/docid/57ff50c94.html> [accessed 19 April 2017]

²³ UN High Commissioner for Refugees (UNHCR), *The 10-Point Plan in Action, 2016 Update, Chapter 10: Information Strategy*, December 2016, available at: <http://www.refworld.org/docid/58208fdc4.html> [accessed 19 April 2017]

displacement, including through operationalisation of commitments made by States in the NY Declaration to combat racism and xenophobia.²⁴

In conclusion, we are living in a time where the proliferation of persecution and violent conflicts around the world has resulted in escalating rates of displacement, growing humanitarian needs, and increasingly complex protection environments. Now more than ever, a renewed, all-out effort is necessary to ensure that the protection of displaced people remains life-saving, non-political, and fundamentally humanitarian. Human rights, with non-discrimination as a core principle, are inalienable entitlements – not a privilege. We must join efforts to tackle root causes of all forms of intolerance, in recognition of the connections that racism and xenophobia can have to the displacement and plight of persons in need of safety from violence and persecution today. And, in this context, we foresee many opportunities where, working together, we can leverage human rights systems in advancing the commitments set out in the New York Declaration, and in the development of a culture of prevention envisioned by the Secretary-General.

²⁴ UN High Commissioner for Refugees (UNHCR), *67th Session of the Executive Committee of the High Commissioner's Programme Agenda point 4(a) - Statement by Volker Türk, Assistant High Commissioner for Protection*, 5 October 2016, available at: <http://www.refworld.org/docid/57f655a04.html> [accessed 19 April 2017]