



Contribution to the

OSCE CONFERENCE ON RACISM, XENOPHOBIA, AND DISCRIMINATION

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Discrimination, racism and xenophobia are major causes of human displacement. At the same time, refugees, asylum seekers, other non-citizens and displaced people of concern to UNHCR all too often face discrimination in the communities where they seek safety. Political manipulation, irresponsible media or lack of education and awareness in the host population can easily cause or aggravate such intolerance further undermining public support for the reception of these groups. Refugees, asylum seekers and victims of human trafficking are also often associated in the media with criminals, adding to the rising tide of xenophobia and discrimination.

In the Declaration¹ concluding the UNHCR Global Consultations, State Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees explicitly recognise the need 'to maintain the integrity of the international refugee protection regime, notably through advocacy, as well as public awareness and information activities, aimed at combating racism, racial discrimination, xenophobia and related intolerance, and gaining public support for refugees'. UNHCR's Agenda for Protection further takes up these challenges under its first Goal where one of the objectives of enhancing respect for refugees calls on States, UNHCR and other relevant actors to foster a positive and respectful attitude towards refugees.

UNHCR therefore fully endorses and is an active partner in the broad range of OSCE efforts in the field of tackling racism, xenophobia and non-discrimination. UNHCR remains concerned with expressions of racism, xenophobia and discrimination all throughout the OSCE area, which seriously endanger refugees' rights to international protection. Protection must include both the physical security and respect for the human dignity of refugees. One of the essential elements of international protection, then, is non-discrimination, in addition

¹ The *Declaration of States Parties to the 1951 Convention and/or its Protocol relating to the Status of Refugees* was adopted at the conclusion of the December 2001 Ministerial Meeting of States Parties to the Convention.

to admission to safety, exemption from forcible return (*non-refoulement*), and assistance to meet refugees' basic needs and fundamental human rights.

UNHCR's Role

Racism is a challenge facing all segments of society and government. While the issue cannot be successfully addressed by legislation alone, a proper legislative framework is nevertheless essential. Respect for human rights, in particular for the principle of non-discrimination vis-à-vis all persons within a State's territory, is a precondition for the development and maintenance of a general culture of inter-ethnic tolerance. The creation of (legal) norms not only sanctions particular behaviour but, in the long-term, will influence value systems within society. The recognition and continued respect for such rights is essential and, in the refugee context, particular attention must be given to the observance of State obligations under the 1951 Convention and its 1967 Protocol.

In this respect, UNHCR carefully follows all developments in the national legislative frameworks that affect persons of concern to the High Commissioner. While our legislative monitoring and lobbying efforts concentrate mainly on asylum and citizenship legislation, attention is also given to the amendment of alien, social, criminal and anti-discrimination legislation. UNHCR is, for example, carefully observing the transposition of the European Commission (EC) anti-discrimination directives, in particular the Racial Equality Directive 2000/43/EC, into national law and practice in regard to its impact on refugee protection issues.

As part of UNHCR's ongoing co-operation with the Office of the High Commissioner for Human Rights (OHCHR) and the UN human rights machinery, UNHCR is, inter alia, covering the work of the Committee on the Elimination of Racial Discrimination (CERD). The Committee's intention to draft a general recommendation on the rights of non-citizens, (also recommended by the UN Sub-Commission on the Promotion and Protection of Human Rights at its 55th Session, 2003, and its Special Rapporteur on the rights of non-citizens, Mr. David Weissbrodt), is strongly supported by UNHCR.

Beyond general monitoring and its efforts to address developments in the legislative framework, UNHCR has initiated a broad range of activities to prevent racist attacks and discrimination against refugees on an operational level. In Europe, UNHCR has run a public awareness campaign in television/print advertisements and posters in all 15 EU countries. Funded by the EC, the project aims to address negative stereotypes and xenophobic attitudes towards recognised refugees, and to ensure their smooth integration into the host society. Other events include the establishment of a panel of refugee speakers in Ireland, and seminars in Austria and Germany (Bavaria) to familiarise journalists with refugee integration needs, the mechanisms available and the need for integration policies. Beyond these preventive measures, it should be noted that legal counselling services in many

countries (including a 24-hour hotline in an Eastern European country) assist refugees who, inter alia, have become victims of crimes motivated by racism or xenophobia.

Racism as Root Cause of Refugees' Displacement

While 'racism' is an important factor when analysing root causes for displacement, it does not give a complete picture. Often, the development of inter-ethnic conflict is not the sole responsibility of one (racist) party, but rather the result of mutual lack of inter-ethnic tolerance. Conflict and tension escalate over time, both sides feeling that they are the victims and that their use of violence is merely a response to violence inflicted against them. Such cycles must be broken, and the earlier the efforts to do so begin, the higher the chances for success.

Ethnic and racial tensions can be seen as a root cause of refugee flows for two reasons:

First, they can be a consequence, or form an intrinsic part of political strategies to exploit the differences between various ethnic groups in order to mobilise support. Ethnic antagonisms can be deliberately fanned for their own and sometimes unrelated ends. Second, despite the fact that most States contain a variety of ethnic groups, the ethnic identity of a single group is all too often made into a defining characteristic of nationality. Some minority groups may be seen as an obstacle to nation building, incapable of adapting to a homogenous, national identity.

While the events that trigger refugee outflows are specific to each particular setting, certain common characteristics are apparent. The immediate cause of flight is in most cases an imminent threat to life, liberty or security. The deliberate expulsion of an ethnic group may be the direct tactic and object of the conflict itself.

Recurrent conflict among ethnic or communal groups within a State calls for mediation by the central government. If the State is party to the conflict or if it is otherwise unwilling to perform its mediating role effectively, 'ethnic cleansing' or other forms of forcible segregation of populations may be the result.

A requisite for the prevention of refugee flows and the promotion of voluntary repatriation as a solution to refugee problems is sufficient political will by the State directly concerned to address such issues as lack of human rights, the use of force, inter-ethnic disputes and economic and social degradation.

The Role of Governments and Civil Society in Promoting Tolerance: The Challenge of Inter-Ethnic Reconciliation in the context of Repatriation and Re-Integration Efforts

There are three durable solutions to refugee displacement: voluntary repatriation to a refugee's country of origin or place of former habitual residence, local integration in the host country, or resettlement in a third country. Although the most viable durable solution will depend upon the specific context of each refugee situation, voluntary repatriation will be the most preferred of the solutions, subject to fundamental changes (in the country of origin or place of former habitual residence) which create conditions conducive to sustainable return.

In the past, repatriation operations took place as the last stage in the process of a State's return to normality and usually after peace and stability had been restored to a country. However, in the 1990's we have seen that repatriation is increasingly taking place in less than ideal circumstances and sometimes in conditions of continued conflict and general insecurity in the country of return.

In this context, some of the obstacles to the return of refugees to their country of origin can be attributed to a weak State and civil society which makes the process of peace building and the creation of a stable and secure environment difficult. In addition, the precise nature of the return movement will also affect any peace-building process. Repatriation of refugees *en masse*, as opposed to smaller numbers over a long period of time, has significant implications for the reintegration process. It may affect the process of economic reconstruction, especially where large numbers of returnees place a strain on local resources and infrastructures. Large scale return may also influence the policies and legitimacy of the State, especially in the context of elections, or where return alters the balance of power from one ethnic group to another. Repatriation may also either facilitate or jeopardise the process of reconciliation between parties to a conflict.

In order to meet these challenges, the State is essentially dependent on the successful reconstruction of civil society and the process of reconciliation. It is therefore crucial for States emerging from violent ethnic conflicts to secure the commitment and participation of all levels of society to the process of reconciliation. Peaceful Coexistence Initiatives (PCI) to promote coexistence as a vital dimension of relief, rehabilitation and reconciliation have been successfully tested in the context of refugee return operations in Bosnia and Rwanda.

Essential to providing a safe environment and central to the role of human rights monitoring has always been the principle of non-discrimination between returnees and local populations. Once it has been established that returnees were not discriminated against in the enjoyment of key human rights, including equal access to essential public services, or if discrimination persisted but national institutions provided an adequate remedy, then it was commonly assumed that UNHCR could phase out its monitoring activities in the country of

origin. Returnee monitoring is often complemented by activities to promote equity, justice and demilitarisation.

Clearly, for repatriation to be sustainable and if the root causes of refugee flows are to be curbed, then strong action must be taken at the national and local levels to deal with phenomena of racism, xenophobia and discrimination directed against minority groups and/or others of concern upon their return. Community-based activities at the grass-roots level are particularly valuable and effective and often involve multilateral partners.

Conclusion

Racism and discrimination on the basis of race and ethnicity affect all of us and all of us have the responsibility of challenging and ending it. Efforts must be made to ensure that all concerned parties tackle this issue. There can be no doubt that failure to take positive action often leads to more serious social problems, even to violent conflict and outflow of refugees. The protection of returnees from discrimination of any form and the protection of the rights of minorities in general become imperative.

No one can pretend these efforts are easy. They require the collective and comprehensive engagement by all members of the international community and those at all levels of civil society in countries of asylum and within the country of return.

Recommendations to the OSCE participating States

Legislative, Institutional Mechanisms and Governmental Action

- States should enshrine comprehensive equal rights and non-discrimination in their constitution and all relevant legislation (including non-nationals, such as asylum seekers, refugees, returnees, displaced people and stateless persons).
- States should take measures to combat racism, racial discrimination and xenophobia directed against asylum seekers and refugees. In this respect, credible and up-to-date public information on the numbers of those in need of international protection, where that protection is being provided and in what form, has an important part to play in redressing some of the commonly held myths about refugees and asylum seekers.
- States should pass and implement equally comprehensive non-discrimination legislation, complemented with adequate complaints, legal recourse and remedy provisions.
- Perpetrators of racist and xenophobic violence must effectively and openly be condemned through courts of law, human rights commissions and ombudsmen offices. The judicial system and penal institutions must ensure that racially motivated attacks are not tolerated and that a culture of impunity is not allowed to take hold.
- States which have introduced in their legislation provisions granting indemnification to victims of crime should make sure that such provisions and benefits are also available to non-national victims of racist crimes and xenophobic acts. In particular, such provisions should be offered to refugees.
- States should fully comply with their reporting obligations with the UN Treaty Monitoring Bodies and in particular to include into their reports a proper analysis of the situation of refugees, asylum seekers, and other displaced persons.
- States should regularly report on problems and progress in this field.

The Role of Governments and Civil Society in Promoting Tolerance

- States should encourage the development of a strong and independent advocacy by NGOs in order to sensitise the public and officials on problems of racism, ethnic discrimination and xenophobia.

- Officials and politicians, in recognition of the influence they exercise on public opinion must be made more responsible and accountable for their public statements. They should reflect and be made aware that they could contribute to social tensions.

Education, Information and Awareness Raising

- States should invest in providing strict guidelines and training to civil servants (particularly law enforcement officials).
- States should take the lead in promoting inter-cultural activities where all sectors of the community participate in and learn from each other in the spirit of mutual respect and co-operation. Major institutions at all levels of social life should be targeted, including the family, schools, colleges and universities, the workplace, religious institutions and leaders.
- The media should play an essential function as a tool for positive social change as opposed to an instrument to propagate hatred and intolerance.

UNHCR
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