

The Way Forward

Europe's role in the global refugee protection system



Guarding Refugee Protection Standards in Regions of Origin

Executive Summary

Most refugees flee to countries close to their countries of origin, namely regions of origin. All regions are, to a greater or lesser extent, regions of origin, as refugees come from all over the world, including Europe. But the majority of refugees are in developing countries that are struggling to provide them with adequate protection. Living in extremely precarious conditions, without access to adequate food, shelter, security or access to the range of social, economic, cultural, civil, political and legal rights they are entitled to, many refugees remain without a solution in sight. Such protracted refugee situations can continue for many years and even run into decades.¹ The scale and impact of this grim reality demands an urgent global response.

While continuing poverty, political instability, conflict and human rights violations in countries of origin are among the root causes of refugee flows and protracted refugee situations, the international community's lack of sufficient positive engagement, in both countries of origin and countries hosting refugees, are also to blame. Development efforts to effectively tackle root causes must be strengthened and coupled with concerted action to improve the protection environment in regions of origin, to develop and implement comprehensive strategies for solutions to refugees' plight and to promote greater responsibility-sharing and international solidarity between states. However, European states appear to be driven more by the desire to better 'manage' migratory flows to their countries and thus decrease the number of people seeking asylum in Europe.

Europe must play an active role in improving refugee protection in regions of origin, without undermining the right to seek asylum in Europe.

One element of the 'migration management' agenda of some European states has been to try to arrive at a minimalist collective understanding of what constitutes 'effective protection' in regions of origin. This could help them more easily designate third countries as 'safe', which can lead to asylum seekers being denied entry into Europe and being returned to such countries. However, states are obliged to ensure that they do not return or transfer any asylum seeker or refugee to a place where their rights may not be fully respected.

Europe must act on the basis of a comprehensive understanding of what constitutes protection, drawn from international refugee and human rights law.

European Union (EU) plans to develop Regional Protection Programmes (RPPs)² have the potential to contribute to improvements in refugee protection in regions of origin, if they are protection-oriented and adequately funded. In order to be effective, they must comprise one element of a wider strategy for regions of origin that is

¹ At the end of 2003 there were over six million refugees worldwide involved in 'protracted refugee situations', *Protracted Refugee Situations*, Standing Committee 30th meeting, UNHCR, EC/54/SC/CRP.14, 10 June 2004.

² *European Commission Communication on regional protection programmes*, COM (2005) 388 final, 1.9.2005. Note that the first pilot is planned in Eastern Europe (Ukraine, Belarus and Moldova) and the second in the Great Lakes region (Tanzania).

principled, holistic and comprehensive and aimed at ensuring that refugee protection standards are upheld and implemented.

Principles

The following principles underpin the elements necessary to guard refugee protection standards globally:

- An individual must be granted, without delay, the human rights to which he/she is entitled under international refugee and human rights law.
- Regions of origin should not be taken to mean only developing countries.
- Helping to make refugee protection more effective beyond Europe does not substitute European countries' obligation to protect refugees who spontaneously arrive on their territory.
- The responsibility for hosting and protecting the world's refugee population must be shared more equally between states.
- Strengthening protection in regions of origin should not be regarded as a means of returning or transferring asylum seekers and refugees from Europe to other countries.
- No state should assist another state to act in ways that would breach its own obligations under international law.

Elements of Protection

If refugees are to access protection that is effective they must enjoy the rights flowing from the relevant international and regional refugee and human rights instruments.

- The **guarantee of non-refoulement**, as the essence of refugee protection and part of customary law, is, in this context, the first essential step towards ensuring protection is available.
- Refugees must enjoy all their **civil and political rights** and not only rights such as freedom from torture, cruel, inhuman or degrading treatment or punishment, or the right to life.
- **Economic, social and cultural rights** are essential to the enjoyment of protection and other human rights. States restricting the economic rights of refugees are not providing them with protection that is effective.
- The right to **legal protection** (including access to a legal status and necessary documentation) should last for as long as international protection is required and until a durable solution ensues, to which new legal protection rights would be attached.

- Particular attention should be given to the needs and rights of **vulnerable groups**, including women, children, the disabled and older persons, in accordance with the relevant international human rights instruments.
- Refugees should have timely access to a **durable solution**. States should play a leading role in the development of comprehensive strategies for durable solutions and European states should increase the availability of resettlement in Europe.³

For protection to be considered effective, governments in all regions must, without reservations, accede to and comply with the standards set out in the 1951 Refugee Convention and the 1967 Protocol, and other relevant international and regional human rights instruments. For example, it is essential for European states to accede to and comply with the European Convention on Human Rights (ECHR). While accession to such instruments alone does not prove that a country is providing protection that is effective for refugees on its territory, it can be an important indicator of a state's political will to do this and can help UN bodies exercise their supervisory functions.

Accessing Protection

If an individual undergoes an asylum procedure and/or status determination procedure, this will only provide them with effective access to protection if it is undertaken in the form of an individual assessment. This should include all the necessary safeguards, such as free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a suspensive right of appeal.⁴

Prima facie and group recognition are useful to speed up access to protection. However, states should ensure that the full range of human rights to which refugees are entitled and timely access to durable solutions flow from these processes. Any additional procedures for accessing durable solutions should not be lengthy.

Temporary protection programmes should be fully respectful of refugees' rights and be able to lead to durable protection. However, such programmes, as historically implemented in Europe, have been, and will likely continue to be, too limited to do this. Any future temporary protection regimes in Europe must, nevertheless, provide access to refugee status determination at any time, in accordance with EC legislation.⁵

Returns and transfers to 'safe third countries'

The fact that a third country respects the right to *non-refoulement* is not sufficient to justify the return or transfer of asylum seekers or refugees to that country. The critical determinants of return to a 'safe third country' should be whether they would access a fair asylum procedure and enjoy all their rights, including whether a state complies fully with the 1951 Refugee Convention and the 1967 Protocol. Additionally, ECRE considers that, even where adequate protection might be available in a country of first

³ See ECRE, *The Way Forward. Europe's role in the global refugee system. Towards a European Resettlement Programme*, April 2005.

⁴ See ECRE, *The Way Forward. Europe's role in the global refugee system. Towards Fair and Efficient Asylum Systems in Europe*, September 2005.

⁵ See the so-called *Temporary Protection Directive 2001/55/EC of 20 July 2001*, Article 17(1).

asylum or in a ‘safe third country’, asylum seekers or refugees should never be returned or transferred there if:

- It would be inconsistent with international responsibility-sharing principles;
- Only temporary protection will be provided;
- The country hosts a protracted refugee situation;
- Resettlement is the only available durable solution;
- They have no meaningful links with the country and have not consented;

States should also consider their obligations to respect rights related to asylum seekers' or refugees' circumstances in the sending country, such as family ties or health reasons.

Any readmission agreements in place between countries should be consistent with international refugee and human rights law standards. The process of reaching such agreements should be transparent and monitored, with their full content made publicly available. They should not contain enforcement conditions linked to the provision of assistance by European states to developing countries. The receiving state should additionally have explicitly agreed to readmit an individual as an asylum seeker or refugee.

International solidarity and responsibility – sharing

Developing countries already host the majority of the world’s refugees. Actions that would shift more responsibility to those already over-stretched countries only risk further destabilising the international refugee protection system. International and European cooperation should lead to greater responsibility-sharing and go beyond its current overwhelming focus on the strengthening of border controls. Responsibility-sharing should also concretely contribute to the greater provision of durable solutions to refugees. Resettlement, for example, can have a positive impact on the protection environment for those refugees who remain in a host country. Development assistance can contribute to improving the prospects of integration into the host society and to increasing refugees’ self-reliance while they await a solution.

Enhancing protection in regions of origin is not a quick fix solution to the asylum challenges faced by industrialised countries. It is a long-term task requiring significant resource investment, including the strengthening of national structures and support services and ongoing technical assistance. European states should undertake concrete measures to help other refugee-hosting countries provide a better quality of protection. There are a number of stakeholders, in addition to governments, such as NGOs and UNHCR, who do important work strengthening protection capacities. Capacity-building programmes in all regions of origin should therefore combine direct assistance to governments with adequate funding of UNHCR, NGO refugee protection programmes and civil society more widely. Programmes should take into account the rights and needs of the local host populations. The fundamental and urgent need to effectively address the root causes of forced migration must also be more of a political priority for Europe.

This is a paper version of the Executive Summary of ECRE’s Way Forward Paper ‘Guarding Refugee Protection Standards in Regions of Origin’. The full version of the paper is available at www.ecre.org. For further information concerning the full version of the paper please contact Patricia Coelho at pcoelho@ecre.org.