

Amnesty International's observations to UNHCR's Consultations on Convention Plus

The principle of responsibility-sharing is based on international obligations to protect refugees and find safe and durable solutions for them. It follows therefore that any responsibility-sharing arrangement must promote the interests of refugees and not simply that of states, or even worse, a handful of powerful states. Otherwise, it will only serve to complicate the refugee problem, rather than resolve it.

Amnesty International believes that Convention Plus could provide a process for developing concrete responsibility-sharing arrangements, that to be effective must include a strong protection component. It should incorporate more explicitly the human rights obligations of states, and the human rights context in which the 1951 Refugee Convention rests. This was reflected in the Global Consultations and the Declaration of States Parties of December 2001.

The Forum should be seen as an opportunity to negotiate concrete agreements to address specific refugee situations in a transparent manner.

It should be borne in mind that the legal basis for the special agreements envisaged under Convention Plus draw *inter alia* on paragraph 8(b) of the UNHCR Statute, namely "execution of any measures calculated to improve the situation of refugees falling within the competence of the Office and to reduce the number requiring protection".

Convention Plus could in that sense prove to be an important tool for states, UNHCR and NGOs to identify durable solutions in a timely way to protracted refugee situations that continue to persist in many parts of the world.

However, there is a risk that other proposals, such as the recent one put forward by the UK, if linked to Convention Plus could seriously undermine the potentially positive contribution of this process to the principled management of refugee problems in a protection sensitive and solution-oriented manner.

The real goal behind the UK proposal appears to be to reduce the number of spontaneous arrivals in the UK and European Union states by denying access to territory and shifting the asylum seekers to processing zones outside the European Union, where responsibility, enforceability and accountability for refugee protection would be weak and unclear. Although proposals might not explicitly envisage amendment to or withdrawal from the 1951 Refugee Convention, they would clearly represent attempts to circumvent important domestic and international legal instruments, including the 1951 Refugee Convention.

In Amnesty International's view the proposal is legally flawed. In addition to contravening the intent and purpose of the right to seek and enjoy asylum set out in the Universal Declaration of Human Rights and the 1951 Refugee Convention regime, they avoid binding obligations of international law, including those set out in the International Covenant on Civil and Political Rights, the Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention on the Rights of the Child, to name a few.

Even where the European Convention on Human Rights is concerned, the focus is not on compliance with the broad spectrum of human rights guarantees found in that instrument but only with the provision prohibiting torture and cruel, inhuman or degrading treatment or punishment.

Asylum seekers who arrive in the territory of a 1951 Refugee Convention state party engage its protection obligations under the Convention. Any attempt to restrict their movement or remove them from the territory must be in accordance with the standards found in the 1951 Refugee Convention and in international human rights law. Amnesty International has serious doubts about the legality of transferring persons to other countries for processing under the terms which the UK proposal envisages. Furthermore, these concerns apply not only to international refugee law, but also to international human rights law, given that significant human rights violations and accountability problems could arise in the course of or related to such transfers, as we have seen in the context of the "Pacific Solution" promoted by the Australian government.

The UK proposal, if implemented, would divert accountability from States parties by placing responsibility on international organisations and, in some cases, possibly even non-parties that are not bound by the 1951 Refugee Convention. The initiative would effectively serve to dilute the primacy of states' responsibility for refugee protection, including for refugee status determination procedures, reception arrangements, and identification of the appropriate country of asylum in accordance with international human rights and refugee law standards.

Furthermore, involvement in the maintenance of the processing zones, could seriously compromise UNHCR's international protection mandate if it is or is seen to be party to the removal of refugees from a territory where they would enjoy a higher standard of protection to one where the standards are likely to be lower.

The UK proposal also undermines the commitment made by European governments at Tampere to uphold the 1951 Convention.

It threatens the principle of international solidarity on which international protection and solutions for refugees depend, by creating two classes of asylum states: the rich and powerful States that can select whom they will accept as refugees and the rest who are compelled to host large numbers, including people returned from the rich countries. Such a two-tier system is bound to destroy international cooperation and solidarity that is essential for the operation of UNHCR and the proper working of the UNHCR Executive Committee.

It has been suggested that it might be appropriate to undertake a pilot project which would test the feasibility of the UK proposal. In Amnesty International's opinion Australia's "Pacific Solution" has a sufficient number of parallels with the UK proposal that it should be considered as the pilot project and subjected to serious independent evaluation. Indeed, in view of the controversy that surrounded the "Pacific Solution", it would seem irresponsible to forge ahead with the UK proposal without first examining the impact of the "Pacific Solution" on refugee protection and solutions. Such an approach would be in keeping with UNHCR's supervisory role under article 35 of the 1951 Refugee Convention. Amnesty International suggests that UNHCR establishes a group of independent experts who could undertake such

an analysis with a view to feeding authoritatively into any further discussions on the viability of such proposals.

Instead of allowing the UK proposal to dominate the discussion on new ways of handling mixed movements of refugees and migrants, Amnesty International is looking to UNHCR to take the lead, and, building on the conclusions from the Global Consultations, help define concrete arrangements for resolving specific refugee situations in a principled manner.

Amnesty International appreciates the desire of governments and UNHCR to promote new and more effective ways of dealing with mixed movements of refugees and migrants. However, we believe such efforts should be firmly based on principles of refugee law and human rights.

Recommendations

States

States should:

- be mindful of their human rights and refugee law obligations;
- ensure that Convention Plus provides a process for developing concrete responsibility-sharing arrangements that includes a strong protection component and incorporate the human rights obligations of states, and the human rights context in which the 1951 Refugee Convention rests;
- not engage in any process, within the framework of Convention Plus or outside it, that would effectively serve to dilute in any way from state responsibility for refugee protection;
- ensure the continued involvement of non-governmental organizations in all aspects of the Convention Plus and Forum process in order for the process to be transparent and to benefit from their experience and expertise on refugee protection matters.

The United Nations High Commissioner for Refugees

The United Nations High Commissioner for Refugees should:

- adhere to UNHCR's international protection mandate and UNHCR's responsibility to supervise the implementation of the 1951 Refugee Convention;
- ensure that refugee protection principles and human rights norms are incorporated and respected in any agreements in the Convention Plus or the Forum process;
- establish a group of independent experts who could undertake an analysis of the protection impact of the "Pacific Solution" with a view to feeding authoritatively into any further discussions on the viability of similar proposals.

The International Organization for Migration

The International Organization for Migration should:

- make public its official position or policies regarding the scope and content of the organisation's obligation to comply with international human rights and refugee law standards, in particular with regard to arbitrary detention; unlawful detention; conditions of detention, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners and safeguarding the principle of *non-refoulement*;
- make public its position or policy regarding whether it will accept funding and/or undertake projects which may, directly or indirectly, be giving effect to government policies or practices which do not comply with international human rights and refugee law standards;
- commit the organization to adhering to all refugee protection principles and human rights norms relevant to their operations and ensure their immediate implementation, including through ensuring that it not becomes party to the removal of refugees from a territory where they would enjoy a higher standard of protection to one where the standards are likely to be lower.