



OI Policy Compendium Note on Protecting Refugees, IDPs and Asylum-seekers

Overview: Oxfam International's position on refugee protection

Oxfam International believes that governments and relevant international bodies must make increased, sustained and equitable investment in addressing the causes of forced migration and supporting durable solutions for refugees, IDPs and asylum seekers. Refugee protection is a global responsibility, but host countries have direct and immediate responsibilities for providing protection to refugees on their territory. Protection and respect for the dignity of refugees, internally displaced people and asylum seekers must be central to the way in which they are treated, not only during repatriation, but at all stages of their flight and search for solutions.

To reinforce a strong system of international protection for asylum seekers, refugees and IDPs, Oxfam recommends that the 1951 Refugee Convention and subsequent protocol be enhanced and upheld by:

- (i) Ensuring that no civilian is forced to flee or repatriate to face the danger of violence, forced recruitment, sexual assault, or lack of humanitarian assistance. Donor and host governments must protect the right to asylum, and work together to provide durable solutions for refugees and IDPs that guarantee their rights will be protected;
- (ii) Governments making increased, sustained, and equitable investment in addressing the causes of forced migration, through poverty reduction, conflict prevention and resolution, and emergency responses. These initiatives should be pursued on a multilateral basis with the involvement of the UNHCR where appropriate. Donor states must ensure that these efforts are not reserved only for those countries and regions currently the sources of large numbers of asylum seekers. Humanitarian and development assistance should be targeted according to need, and not the domestic considerations of donor countries.
- (iii) Governments continuing to offer asylum to refugees who manage to arrive on their territory. Resettlement schemes and other 'regional solutions' must in no way detract from the responsibilities of states to receive, host and process the claims of 'spontaneously arriving' asylum seekers on their territory. These national and regional asylum systems must be humane, transparent and in line with international standards. It is imperative that they are based on protection rather than deterrence of refugees.
- (iv) Governments incorporating the Guiding Principles on IDPs into national legislation, and implementing them effectively and consistently.

1. Background

Across the world millions of people are forced to flee their homes by persecution for their political beliefs, ethnic group, religion, or sexual inclination, or as a result of war or natural disaster. Some cross an international border and become refugees¹; others remain in their

¹ The 1951 UN Refugee Convention defines a refugee as someone who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country'. The AU Refugee Convention also includes "people fleeing external aggression, occupation, foreign domination or events seriously disturbing public

own country as internally displaced persons (IDPs). Despite their common suffering, international law treats them differently. Therefore this note will examine Refugees (sections 2-3) and IDPs (sections 4-5) separately.

International refugee law provides both for refugees' legal protection (recognising, for example, the civilian and humanitarian nature of assistance to them), and for the promotion of durable solutions to their plight. Such solutions can vary from voluntary repatriation, to integration in the country of asylum, or resettlement in a third country, as well as compensation and restitution.

Beyond refugee law, however, refugees, IDPs and asylum-seekers all have the same basic rights as any other person. For them all, states are never permitted to depart – or 'derogate' – from a core body of human rights law. In times of conflict, international humanitarian law also applies, intended to protect all civilians, including refugees, IDPs, and asylum seekers.

Tragically, there are states and non-state actors that flout many of the rights enshrined in all these laws. And for IDPs, there is neither an agreed and implemented international law to guarantee their access to protection and assistance, nor a single international organisation with the mandate to intervene on their behalf.

2. Protecting Refugees

There are around 10m refugees worldwide, including over 2.4m from Sub-Saharan Africa and 1.2m from Iraq.² Since 1997, 86 per cent per cent of the world's refugees have come from developing countries. In 2006, the largest numbers came from Afghanistan, Sudan, Somalia, Iraq, and the Democratic Republic of Congo (DRC).³

Less well known, developing countries have also *hosted* more than two-thirds of all refugees. Since 1997, the Least Developed Countries alone have hosted around a quarter.

In recent years, the global number of refugees has declined. In 2005, there were large-scale returns including to Afghanistan (from Pakistan and Iran) and Liberia (from Guinea). But most current refugees still live without any prospect of a durable solution to their plight. In 2004, 5.7m refugees lived in 33 situations of protracted exile, according to the UN High Commissioner for Refugees (UNHCR). Above and beyond the 4.4m Palestinians, the largest and most protracted of all refugee populations in the world, who fall under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as many as 2m stateless Palestinians also live elsewhere.⁴

The right to seek asylum is enshrined in article 14 of the Universal Declaration of Human Rights. The 1951 UN Refugee Convention sets out refugees' basic rights, which go beyond protection to include access to education, employment and health care, and freedom of thought and movement. 140 states have ratified the Convention and its 1967 Protocol, the most recent signatory (at time of writing) being Afghanistan in 2005. Among those countries that have not signed, however, are India, Libya, Pakistan, and Thailand.

Some developing countries, of course, may require international assistance to help them protect and host refugees. Without that, refugees may face a combination of unwillingness and incapacity to act on the part of host governments, many of which have problems meeting the needs of their own populations. Tanzania and Kenya, for example, host 549,000 and 315,000 refugees respectively. They operate strict policies forcing refugees into camps; urban refugees outside them receive no support, and face heavy penalties.

order" a definition, which is reflected by the Central American Cartagena Declaration on Refugees. Terrorists and war criminals are explicitly excluded from the 1951 refugee definition.

² UNHCR (2007) '2006: Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons', p. 5

³ *ibid*, p. 7

⁴ T. Rempel (2006), 'Who are Palestinian refugees?' *Forced Migration Review* 26: 5-7
<http://www.fmreview.org/FMRpdfs/FMR26/FMR2602.pdf>

The Refugee Convention lays down the two basic principles to protect refugees. Firstly, *non-refoulement* prohibits the forced return of refugees to any place where they could face persecution, whether by closing borders, or turning people away from them, or by direct or indirect expulsion from a place of refuge, including by withholding assistance. Secondly, impartiality requires states to protect all refugees without discrimination.

Both principles are now under pressure. Fears of security threats, ‘uncontrolled’ migration, and cost have reshaped many countries’ asylum policies in two broad directions. Firstly, an increasing number of asylum-seekers are forcibly detained and excluded from asylum, often without due process, as the Refugee Convention and Protocol are applied more restrictively. Tighter controls have meant that some refugees are either returned to unsafe countries, or forced into dangerous and clandestine ways to reach a safe refuge. At least 6,300 people have been killed seeking to reach the EU alone.⁵ Secondly, governments have developed a proliferation of alternative measures, guaranteeing fewer rights than the Convention, branded by some as outdated and unworkable.

As a result, there is an increasing gap between what refugees need (and international law provides for) and the protection most actually receive. That ‘protection gap’ has of course always existed, as real and perceived security threats, and resources, limit states’ willingness to offer asylum, adequate assistance and protection. At the same time widespread insecurity limits the ability of all actors, including agencies like Oxfam, to provide the assistance they seek to.

That ‘protection gap’ now affects millions of people, including those who face these specific situations:

- a. Over 11m stateless people. With no legal nationality, stateless people are often victimised, without effective protection from states or the UN. Relatively few governments subscribe to the international norms designed to protect them; only 57 states are party to the 1954 Convention on Stateless Persons. UNHCR’s mandate covers them, but it devotes relatively few resources to this, and has to confront the scepticism or non-acceptance of important states.⁶
- b. Over 7.35m refugees in protracted crises with no prospect of a durable solution. These people have lived in refugee camps for over 10 years, in forced dependency, often with inadequate assistance, and exposed to violence. Women in particular face sexual exploitation and violence in camps.
- c. Palestinian refugees, the largest refugee population, excluded from the protection offered by the Refugee Convention. Article 1D excludes refugees that receive protection or assistance from another UN agency, in this case UNRWA. UNRWA, however, was only given a mandate to provide assistance to Palestinians, and never given a mandate to protect.
- d. Refugees returning to their home countries, whether voluntarily or not. There is significant focus on the suffering that can be caused when refugees are forced to return to their countries of origin. But many of those who return voluntarily also need protection, and fail to get it, when they go back to countries where conflicts have only been partially resolved, and political or economic crises continue. Despite this, there is often insufficient priority and funding given to programmes for such ‘returnees’, who can fall between the gaps in mandates of different UN agencies.

3. Oxfam International’s position on protecting refugees

The direct and immediate responsibility for protecting refugees falls upon the ‘host states’ that they flee to. When these are unable to carry this out without additional assistance – or

⁵ United for Intercultural Action, a European NGO, have recorded the deaths of over 6,300 people trying to access asylum in Europe. Many thousands more deaths go unrecorded in Europe and across the world.

⁶ Refugees International, ‘Stateless People’
<http://www.refugeesinternational.org/content/issue/detail/4835>

otherwise fail to do so – the UN, donor governments, and NGOs must play a central role as well. These international bodies must work closely together to provide the funding, technical assistance and, if requested, leadership required.

Both host states and their international partners should respect the safety and dignity of refugees, IDPs, and asylum seekers, at every stage of their plight, from their flight from persecution to their search for all kinds of solutions, including repatriation, resettlement or integration. They should not continue the trend taking an increasingly restrictive interpretation of the Refugee Convention.

In contrast, they should make maximum and flexible use of the Convention and other existing instruments, before resorting to more discretionary measures. It is time to fill the 'protection gaps', and build an effective global regime, centred on the responsibilities of governments, to protect refugees around the world. For refugees fleeing genocide, war crimes, ethnic cleansing, and crimes against humanity, this is a vital component of the task that governments still face to uphold their 'responsibility to protect' civilians threatened by those crimes.

Oxfam recommends that:

- ⇒ ***Durable solutions:* Governments must make increased, sustained and equitable investment in addressing the root causes of forced migration, and supporting durable solutions for refugees and asylum seekers.**
- ⇒ ***Protection and security:* Governments and UNHCR should take comprehensive approaches to protecting refugees, developing strategies for a broad range of situations that engage refugees and other key actors at every stage.**

These should include the:

- Implementation of national legislation which is consistent with international instruments relating to the protection and assistance of refugees;
 - Ensuring that the size, layout, location and organization of refugee camps are conducive to the maintenance of security, especially for vulnerable groups such as women and children;
 - Effective dissemination of reliable information to refugees;
 - Participation of refugees in the physical planning and management of a camp and their involvement in the mechanisms governing assistance and protection; and
 - Effective communication, and equitable policies, between refugees and the 'host' populations near them, to ensure good relations
- ⇒ ***Asylum:* No actions – including resettlement schemes and other 'regional solutions' – must be allowed to undermine states' responsibilities to receive, host and process the claims of asylum seekers (including those 'spontaneously arriving' on their territory). All national and regional asylum systems must be humane, transparent, in line with international standards, focused on protecting rather than deterring refugees from seeking safety from persecution.**

All asylum systems should:

- *Prioritise* the protection of the asylum seeker above other considerations when deciding on the status of all applicants
- Consult UNHCR as the credible and legitimate partner on all forms of international protection for refugees

Oxfam calls on:

- The international community to work together to draw attention and find comprehensive solutions to the protracted refugee situations that affect over 7m people who have been living in refugee camps for 10 years or more.

- Governments to ensure that their policies and practices do not *refoule* (i.e. force asylum seekers to return) or deny access to asylum for people in need of protection. This includes putting in place asylum safeguards in migration and border controls and not closing borders in response to large refugee movements.
- Governments, and UNHCR where it conducts Refugee Status Determination, to ensure a full, fair and effective asylum process including access to legal assistance and appeal.
- Governments to ensure that bilateral and multi-lateral agreements on refugees have protection at their core, do not shift burden to poor countries, and do not involve aid conditionality.
- Political and media leadership to address and reduce hostility towards refugees and asylum seekers in host countries.
- Host Governments and UNHCR to ensure that refugee return is fully voluntary. Return must never amount to direct *refoulement*, or indirect *refoulement* through the deliberate deprivation of basic assistance. Governments and agencies must do all they can to ensure that returnees have full access to information and return is conducted in dignity.
- Governments in rich refugee hosting countries to increase or introduce resettlement quotas. This however must not be as a substitute to offering protection to spontaneous arrivals.

4. Protecting internally displaced people

The continuing crisis in Darfur perfectly exemplifies the modern trend – that more people are displaced within their countries than across borders, in most current conflicts. Darfur's violence has driven a quarter of a million Sudanese to flee to neighboring Chad. But a far greater number – over 700,000 – remain internally displaced in Sudan.⁷ Globally, there were around 24.5m IDPs in 2006, more than twice the number of recorded refugees – not least because of some governments' increasing inhospitality to refugees.

While the plight of refugees is often perilous, it is now also widely recognized that IDPs⁸ face many particular threats, which governments and the international community have often failed to tackle. For IDPs, there is no equivalent of the Refugee Convention. And there are gaps in the coordination, demarcation of responsibility, and accountability among the international agencies that could protect them.

IDPs, however, face many of the problems that refugees do – including the protracted nature of their displacement. Between 70-80 per cent of IDPs may be women and children, and 14m are at risk of death by violence. Six million are without significant protection or humanitarian assistance from their governments, and in nearly a third of the major IDP countries, there is no UN involvement in IDP protection or assistance. The highest numbers of IDPs are in Sudan, Colombia, Uganda, DRC and Iraq.

Domestic law, international humanitarian law and human rights law are all applicable to displaced people. In 1998 'The Guiding Principles on Internal Displacement' were also created to strengthen the protection of IDPs. These are not in themselves legally binding, but they reassert many legally binding provisions from international humanitarian and human rights law and, by analogy, principles of refugee law. They restate that IDPs are entitled to the same rights, without discrimination, as all other people in their country. They also spell out specific principles to address the particular problems that IDPs face, covering all 'stages' of displacement: protection *from* displacement, *during* displacement, as well as protection during return, resettlement and reintegration. They explicitly note that the State has the primary

⁷ UNHCR (2007) Global Appeal 2007 – Sudan www.unhcr.org/home/PUBL/4554439d0.pdf; UNHCR (2007) Global Appeal 2007 – Republic of Chad www.unhcr.org/home/PUBL/4554439c0.pdf

⁸ IDPs, 'have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.' Office of the UN High Commissioner for Human Rights, Questions and Answers about IDPs, www.ohchr.org/english/issues/idp/issues.htm

responsibility to provide protection and assistance. But they are designed as guidance not only for governments, but for the UN, international and national NGOs, and others as well.

"As with refugees, however, the reality facing most IDPs is far less satisfactory. Many governments have still not incorporated the Principles into their domestic legislation or adopted specific policies to protect IDPs.

More seriously still, in two-thirds of current crises where conflicts have generated IDPs, governments themselves are displacing their citizens. Displacement and the forcible transfer of populations are crimes under international law. In a quarter of cases, states restrict humanitarian agencies' access to displaced people in need. In almost half of the countries affected by internal displacement, national governments tried to block international involvement, citing principles of state sovereignty and non-interference. In many of these countries, where sensitive human rights issues were at stake, the UN stayed silent on IDP issues, apparently not wishing to jeopardise its existing programmes with the relevant governments.

UNHCR has no formal responsibility for IDPs, though it has in practice taken on significant responsibility for them. But without a single UN 'IDP agency', the UN's co-ordination and intervention for IDPs have been inadequate and patchy. To remedy this, there have been a number of attempts to improve UN co-ordination to support IDPs. In 1992 the UN Secretary General created a Special Representative on IDPs, since 2004 Walter Kalin. He is linked to the Office of the High Commissioner for Human Rights and reports annually to the Human Rights Council and UN General Assembly. The Emergency Relief Co-ordinator, currently John Holmes, is the focal point for IDPs within the UN system. To support this mandate, in 2002 an Internal Displacement Division was created within the Office for Coordination of Humanitarian Affairs, to provide system-wide improvements to IDP response and targeted support in specific situations.

Since 2005, the 'cluster initiative' has been introduced to replace the weak inter-agency 'collaborative response' on IDPs (which is explained in another OI note in this series, on [Humanitarian Coordination](#)). UNHCR takes the lead on the three 'cluster' sectors that focus primarily on IDPs: protection, shelter, and camp management. UNHCR has now thus formally assumed a global responsibility for the key elements on IDP protection and assistance in humanitarian response.

5. Oxfam International's position on protecting IDPs

Much of our position on refugees above naturally applies to IDPs. States have the primary responsibility to provide protection and assistance. They and their international partners should respect the dignity of IDPs, ensure their safety, and their right to make informed, voluntary choices on their return and other issues. For IDPs fleeing genocide, war crimes, ethnic cleansing, and crimes against humanity, this is a vital component of the task that governments still face to uphold their 'responsibility to protect' civilians threatened by those crimes.

There are however actions that must be taken to help IDPs specifically.

Oxfam recommends that:

- ⇒ **Governments should incorporate the Guiding Principles on IDPs into national legislation, and implement them effectively and consistently**

In particular, governments should:

- Prevent or mitigate displacement. When displacement is unavoidable, governments are expected to raise national awareness of the problem, collect data on the numbers, locations and conditions of the displaced and facilitate access to populations at risk, including those under rebel control.

- Adopt laws and policies to protect displaced populations; train their officials, military and police in the rights of the displaced; and designate an institutional focal point for co-ordination within the government and with local and international partners.
- Allocate resources in the national budget for the displaced, or creating special funds from oil and other revenues. Responsibilities should be clearly defined and communicated. Governments should aim to find solutions to the plight of the displaced, for instance by giving them the choice to return voluntarily to their homes or to resettle in another part of the country. The displaced should also be assisted to reintegrate and recover, or receive compensation for, lost property.
- Co-operate with international and regional organisations when national capacity is insufficient

Oxfam calls on:

- International media and leaders to ensure that situations of internal displacement do not continue to be ignored by governments and national and international media. Eight countries or regions on Alertnet's list of the 10 most forgotten emergencies are affected by internal displacement.
- Donor governments to provide more funding and more predictable funding which is fairly distributed according to need. This should include timely and effective assistance through the Central Emergency Response Fund (CERF) and also adequate funding for UNHCR's IDP work – currently there is increased responsibility but diminished funding for UNHCR. The division in the UNHCR's budget between refugee work and IDP work must be removed to allow the UNHCR flexibly to respond to crises as they emerge
- UN agencies to ensure effective coordination, prioritisation and comprehensive cover for protection and assistance in IDP situations. UN agencies need to ensure that lessons are learnt from cluster pilot countries e.g. Liberia. In some circumstances, for example in Chad, separate coordination processes for refugees and displaced persons run in parallel, wasting humanitarian staff energies and resources. There need to be better linkages made across the international system between different sectors.