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PROTECTING THE HUMAN RIGHTS OF REFUGEES, ASYLUM SEEKERS AND INTERNALLY DISPLACED PERSONS

**THE WORLD CONFERENCE AGAINST RACISM, RACIAL
DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

**A CRITIQUE OF ELEMENTS OF THE DRAFT DECLARATION AND
PROGRAMME OF ACTION (A/CONF.189/WG.1/3, 22 February 2001)**

A refugee is a person 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 or, owing to such fear, is unwilling to avail himself of the protection of that country” (Article 1A, 1951 Convention Relating to the Status of Refugees)

There is an inextricable link between racism, racial discrimination, xenophobia and related intolerance, and the forcible displacement and mistreatment of refugees, asylum seekers, and internally displaced persons. Racism is both a cause and a result of forced displacement, and a barrier to its solution.

Forcible displacement has become a global phenomenon of major proportions. An estimated 50 million persons worldwide have been uprooted from their homes. Amongst these some 14 million are refugees and a further 25 to 30 million are displaced within their own countries. As we enter the 21st century, approximately one in every 120 persons worldwide is forcibly displaced.

A large number of these people are the victims of racism, racial discrimination, xenophobia and related intolerance. Racism affects forcibly displaced persons through every stage of the displacement cycle:

Racism in countries of origin: the cause of forcible displacement

The 1951 Refugee Convention clearly recognizes the central role that racism and ethnic discrimination play in causing refugee movements. Article 1A of the 1951 Refugee Convention declares a refugee to be a person who due to a well-founded fear of persecution for reasons of “**race, religion, nationality**, membership of a particular social group or political opinion” (emphasis added) is outside of her own country and is unable, or unwilling, to avail herself of the protection of her country.

Large numbers of refugees, asylum seekers, and internally displaced persons have been forcibly displaced on the grounds of their race, ethnicity, or nationality. “Ethnic

cleansing” is becoming an alarmingly common occurrence in internal conflicts, resulting both in the mass exodus of refugees into neighboring countries, and in mass internal displacement. Disputes over nationality have also played a part in several contemporary refugee crises, where particular ethnic groups have been arbitrarily stripped of their citizenship prior to their forced expulsion.

Racism in host countries: the treatment of refugees and asylum seekers

Not only do refugees and asylum seekers flee situations of racial and ethnic discrimination and violence, but they increasingly confront such hostility in their countries of refuge. Over the past decade, most notably since the end of the Cold War era when refugees lost their strategic geo-political significance, there has been a global trend of xenophobia and growing hostility towards refugees and asylum seekers. This trend is most notable in the wealthy industrialized states of the West, where there has been a barrage of restrictive policies targeted at asylum seekers, refugees and migrants over the past decade. But even traditionally generous host countries in the developing world, often over-burdened with their own social and economic problems, have become increasingly reluctant to host large refugee populations.

Intolerance and discrimination against refugees and asylum seekers in host countries manifests itself in various forms, these include:

- i) **restrictive entry policies** that obstruct the right of asylum seekers and refugees to freely leave their own countries and undermine the fundamental right to seek and enjoy asylum from persecution. Policies often target particular groups of asylum seekers on the basis of their ethnicity, race, or nationality, with a view to stemming asylum flows from particular countries. These include such measures as:
 - visa controls, carrier sanctions, and the posting of immigration officials as “airline liaison officers” in common refugee-producing countries to assist airline staff in pre-departure controls;
 - the application of so-called “safe third country” and “safe country of origin” policies that risk either directly or indirectly returning refugees to countries where their lives or freedom would be threatened in violation of the fundamental principle of *non-refoulement*, and which deny asylum seekers access to a full and fair assessment of their asylum claims with full rights to appeal;
 - proposals to respond to refugee crises in regions of origin through mechanisms such as “safe havens” and “in-country protection”, in addition to selective admission of fixed quotas of refugees from particular regions;Restrictions on legal entry for asylum seekers, refugees, and migrants have forced many to resort to the services of corrupt and dangerous human smuggling and trafficking syndicates that are able to circumvent routine migration controls – often with serious repercussions for the individuals involved.
- ii) **restrictive interpretations and applications of the 1951 Refugee Convention** by host states that have resulted in excluding from international

protection some of those most in need, including asylum seekers fleeing persecution by non-state agents and situations of state breakdown; women fleeing persecution by private actors, such as family members, for whom adequate protection and redress is not available in their own country; and individuals or groups fleeing situations of internal conflict and related human rights abuse.

- iii) **detention and ill-treatment** of asylum seekers within host countries. This includes the increasing use of detention as a measure to punish or deter asylum seekers who arrive without valid travel documents, often in violation of Article 31 of the 1951 Refugee Convention which prohibits the punishment of refugees who arrive in a territory without authorization. Asylum seekers are sometimes detained arbitrarily, often for long periods of time in poor conditions, sometimes alongside convicted or accused criminals.
- iv) **the racist and xenophobic portrayal of asylum seekers, refugees and migrants in the media** as criminals, “bogus,” and scroungers, and the manipulation of xenophobic fears by the popular press in a way that feeds anti-refugee and anti-migrant sentiments.
- v) **the use of xenophobic and racist rhetoric by politicians and public officials**, and the manipulation of xenophobic fears and anti-refugee/ anti-migrant sentiments, often for short-term political gain.
- vi) **violent racist attacks against refugees, asylum seekers, and migrants** and their communities, often with the complicit involvement, or tacit approval, of law enforcement agents, without adequate measures to bring the perpetrators to justice.
- vii) **social and economic discrimination against asylum seekers, refugees and migrants**, including in access to housing, education, health care, employment, social welfare and other basic rights.

Racism as an obstacle to resolving situations of forcible displacement

Racism and discrimination based on ethnicity and nationality is also a common obstacle to the resolution of situations of forced displacement.

- *Obstacles to return*: in numerous situations, countries of origin have blocked refugees from exercising their legitimate right to return to their own country on the grounds of their race, ethnicity, or nationality. Governments try to consolidate the gains of “ethnic cleansing” by obstructing the right to return of refugees and challenging their right to citizenship. The land and property of refugees who were forcibly expelled from their country on the grounds of their race, ethnicity, or nationality, is often resettled by members of the majority racial or ethnic group as a deliberate strategy by governments to obstruct return and reintegration. Refugees who were arbitrarily stripped of their citizenship prior to their expulsion, or whose nationality status was disputed or unclear, have also been denied their right to return on the grounds that they are not bona fide citizens of the country of origin.

- *Obstacles to local integration*: hostility towards refugees in host countries has proven an obstacle to the full integration of refugees in host communities. Governments, fearing a xenophobic backlash, have opposed the permanent local integration of refugees as a durable solution to long-standing refugee situations.
- *Obstacles to third country resettlement*: access to third country resettlement as an alternative durable solution for those refugees who are unable or unwilling to return to their own country, or to permanently settle in their country of asylum, is under threat in some parts of the world. Some industrialized states, reportedly in response to a perceived rise in “illegal migration” and increased numbers of asylum seekers, have cut their resettlement quotas.

Inequity in the global response to refugee situations

A further manifestation of racial discrimination in the treatment of refugees, asylum seekers, and internally displaced persons is the inequity in the global response to situations of forced displacement.

- Developing countries continue to bear the brunt of the world’s refugees and internally displaced persons. The majority of refugees worldwide seek asylum in neighboring countries in the South that are frequently burdened with their own social, economic, and political difficulties and are often least equipped to deal with a massive refugee influx. Similarly, the vast majority of internally displaced persons are found in the world’s poorer nations. In comparison, wealthy industrialized states take in a very small proportion of the world’s refugees but have been most vigorous in erecting barriers to restrict the entry of asylum seekers and refugees.
- Although the world’s poorest nations shelter the majority of the world’s refugees, the wealthy nations have been slow to provide adequate financial and other assistance to hosting countries. The Kosovo crisis demonstrated the ability of Western states to respond with speed and efficiency to a major refugee crisis. Unfortunately, these same states have not responded with the same generosity to the ongoing, massive refugee crises occurring in Africa, Asia, and the Middle East, away from the scrutiny of the world’s media and with less geopolitical significance for Western states.
- There is inequity in international efforts to resolve refugee crises. Once again, the Kosovo crisis demonstrated the ability of Western states to seek rapid solutions to refugee crises and to facilitate the early return of refugees to their own country. Elsewhere in the world, particularly in Africa, Asia and the Middle East, hundreds of thousands of refugees languish for years in a state of limbo in makeshift camps, with little prospect of a speedy solution to their plight. Countries of origin and host countries require financial assistance to facilitate durable return, reintegration, and local settlement programs. At the same time, wealthy nations are cutting their overseas development budgets and reducing resettlement quotas. The burden of responsibility for resolving protracted refugee crises lies with developing nations, while the industrial states fail to do their share.

COMMENTS AND RECOMMENDATIONS ON THE DRAFT DECLARATION AND PROGRAMME OF ACTION

Section XII on Asylum Seekers, Refugees and Internally Displaced Persons

Human Rights Watch proposes the incorporation of the following elements into the section of the Draft Declaration and Programme of Action relating to asylum seekers, refugees, and internally displaced persons.

- 1. Reference to the 1951 Convention Relating to the Status of Refugees and regional instruments on refugee protection, with particular reference to principles of *non-refoulement* and non-discrimination enshrined in these instruments**

Proposed language:

States should reaffirm their commitment to fully comply with their obligations under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, as well as regional instruments relating to the protection and promotion of the rights of refugees and asylum seekers. Those states that have not ratified these instruments should do so. All countries that have maintained a geographical limitation incompatible with the nondiscriminatory intention of the 1967 Protocol should withdraw it.

[Regional Conference of the Americas, Santiago, Draft Declaration and Plan of Action, WCR/RCONF/SANT/2000/L.1/Rev.4 20 December 2000 (hereafter Santiago Declaration) para. 133; African Regional Preparatory Conference, Dakar, Declaration and Recommendations for a Programme of Action, 22-24 January 2001 (hereafter Dakar Declaration) Declaration, para. 31; European Conference against Racism, Strasbourg, October 2000, Draft Political Declaration, WCR/IC/2001/Misc.4 (hereafter Strasbourg Declaration), Conclusions, para. 26; Report of the Expert Seminar on Racism, Refugees and Multi-Ethnic States, Geneva, May 2000, A/CONF.189/PC.1/9 (hereafter Geneva Refugee Expert Seminar) para. 143; Amnesty International's Recommendations to the Governments for the WCAR, WCR/IC/2001/Misc.3/Add.1 (hereafter Amnesty International) para. 19; Commission of the Churches on International Affairs of the World Council of Churches, WCR/IC/2001/Misc.3 (hereafter World Council of Churches), para. 2.]

States should take the necessary measures to ensure that the fundamental principles of non-refoulement and non-discrimination enshrined in these international refugee instruments are upheld. No person should be expelled, extradited, or returned to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or persecution on account of his or her race, religion, nationality, membership of a particular social group, or political opinion.

[Santiago Declaration, para. 134; 1983 Second World Conference to Combat Racism and Racial Discrimination, Declaration, E/CN.4/1999/WG.1/BP.1 (hereafter 2nd World Conference), Declaration, para. 25; Amnesty International, para. 20]

2. Measures to address racial discrimination and ethnic intolerance and violence as root causes of refugee flows

Proposed language:

States should establish more effective preventive and early warning strategies to identify and monitor ethnic conflicts and potential sources of ethnic violence with a view to preventing the mass displacement of particular populations on the basis of their race, ethnicity, or nationality.

[Geneva Refugee Expert Seminar, paras. 129 – 133; Report of the Central and Eastern European Regional Seminar of Experts, A/CONF.189/PC.2/2, 14 August 2000 (hereafter Central and Eastern European Experts), para. 70; World Council of Churches, para. 2]

States should comply with their obligations under the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and other international instruments dealing with nationality and statelessness (including, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1989 Convention on the Rights of the Child), with regards to the right of all individuals not to be arbitrarily stripped of their nationality, and principles of non-discrimination in the conferral or denial of nationality. Those states that have not ratified these and other international instruments dealing with nationality and statelessness, should do so. States should pay particular attention to the role that disputed nationality or arbitrary deprivation of nationality can play in causing situations of mass displacement.

[Geneva Expert Seminar on Remedies, 16-18 February 2000, A/CONF.189/PC.1/8 (hereafter, Geneva Expert Seminar on Remedies), Recommendations of the Seminar, para. 32.; Central and Eastern European Experts, Recommendations of the Seminar, para. 60]

3. Measures to address racism and xenophobia against refugees and asylum seekers in host countries

i) Freedom of movement and the right to seek and enjoy asylum

Proposed language:

The right of any individual to freely leave their own country and seek and enjoy asylum elsewhere should be upheld. States should ensure that restrictive measures, such as visa controls, carrier sanctions, and airline liaison officers do not impede the fundamental right to seek and enjoy asylum.

[Geneva Refugee Expert Seminar, para. 147 and 148; Geneva Expert Seminar on Remedies, Recommendations of the Seminar, para. 31; Dakar Declaration, Declaration, para. 13; Tehran Declaration, Declaration, para. 7; Strasbourg Declaration, Conclusions, para. 26;]

Governments should not return asylum seekers to so-called “safe third countries” where they may be at risk of direct or indirect refoulement, or other serious human rights violations

[Santiago Declaration, para. 134; 2nd World Conference, Declaration, para. 25; Amnesty International, para. 20]

Governments should immediately cease the practice of excluding asylum seekers on the basis of their country of origin without a serious consideration of their asylum claim. Such practices could result in returning refugees to countries where they may face persecution, torture, and even death.

[Santiago Declaration, para. 134; 2nd World Conference, Declaration, para. 25; Amnesty International, para. 20]

The right of all trafficked and smuggled persons to seek asylum and to be protected against refoulement must be upheld. Migration control measures aimed at curbing the trafficking and smuggling of persons should not interfere with governments’ international refugee protection obligations

[Geneva Expert Seminar on Remedies, Recommendations of the Seminar, para. 29; Human Rights Watch and ECRE, The Human Rights of Refugees and Migrants: A Critique of the Draft General Conclusions of the European Conference Against Racism (<http://www.hrw.org/campaigns/race/print-genconc.htm>) (hereafter referred to Human Rights Watch/ ECRE)]

Asylum seekers should not be penalized for the way in which they enter a territory. Offences related to having been trafficked or smuggled, including the lack of valid travel documents, should not adversely affect smuggled or trafficked persons’ asylum claims, neither should they be grounds for detention.

[Geneva Refugee Expert Seminar, para. 146; Geneva Expert Seminar on Remedies, Recommendations of the Seminar, para. 29; Amnesty International, para. 20]

ii) Detention of asylum seekers in host countries

Proposed language:

As a general rule asylum seekers should not be detained. The detention of asylum seekers is an exceptional measure that must be imposed in a non-discriminatory manner, for a minimal period and must be for reasons prescribed by law and for specified reasons that are recognized in international standards.

Detainees should be informed of the reasons for detention in a language that they understand. All decisions to detain asylum seekers should be automatically referred for review to a judicial or other competent, independent, and impartial authority. Asylum seekers in detention must have access to free and independent legal counsel, a free and impartial interpreter, UNHCR, and other available NGOs.

Children under the age of 18 should never be detained. Asylum seekers should never be detained in prisons or penal facilities with convicted criminals, criminal suspects, or those awaiting trial, unless they are charged or convicted of a criminal offense. Special attention should be paid to the particular needs of women asylum seekers in detention.

[Draft Declaration and Programme of Action of the Conference, A/CONF.189/WG.1/3, 22 February 2001 (hereafter referred to as the Draft Declaration), Programme of Action, para. 65; Strasbourg Declaration, Conclusions, para. 26; Geneva Expert Seminar on Remedies, Recommendations of the Seminar, paras. 30 and 33; Geneva Refugee Expert Seminar, para. 146; Amnesty International, para. 24]

iii) Portrayal of refugees and asylum seekers in the media and by politicians

Proposed language:

Governments should not use or encourage language that promotes xenophobic reactions against asylum-seekers, refugees, and other foreigners. Politicians and the media should avoid negative stereotyping and scapegoating of refugees, asylum seekers, and migrants. States should promote the positive aspects of immigration among the general public, including by stressing the value of diversity and the contribution made by refugees and migrants to society.

[Strasbourg Declaration, Conclusions, para. 26; Dakar Declaration, Declaration, para. 14; Geneva Refugee Expert Seminar, para. 150; Santiago

Declaration, para. 36 and 120; Amnesty International, para. 22; Human Rights Watch/ ECRE; World Council of Churches, para. 2]

iv) Racially motivated violence against refugees, asylum seekers, and migrants

Proposed language:

Law enforcement officials should be appropriately trained to respond to racially motivated violence against refugees, asylum seekers, and migrants. Effective action must be taken to promptly investigate, arrest, prosecute, and punish those responsible for acts of racist violence against refugees, asylum seekers, and migrants, including by public officials and law enforcement officers.

[Santiago Declaration, para. 35 and 122; Dakar Declaration, Recommendations for a Programme of Action, para. 23; Geneva Expert Seminar on Remedies, Recommendations of the Seminar, para. 22; Amnesty International, para. 21; Human Rights Watch/ ECRE]

v) Social and economic discrimination against refugees, asylum seekers, and migrants

Proposed language:

Governments should ensure that refugees, asylum seekers, and migrants have full and equal access to basic economic and social rights as provided in international law, including social security benefits, health care, education, employment, and adequate housing, as well as access to the means to secure legal advice and representation.

[Strasbourg Declaration, Conclusion, para. 27; Geneva Expert Seminar on Remedies, Recommendations, para. 28; Human Rights Watch/ ECRE]

4) Measures to address racism and discrimination as an obstacle to the resolution of refugee situations

Proposed language:

Right to return

The fundamental right of all refugees to return to their own countries should not be obstructed on the grounds of race, ethnicity, or nationality. Effective remedies, including restitution or compensation for property lost, repossessed, or resettled during forcible expulsion should be sought. Governments should ensure that nationality disputes giving rise to, or arising

from, situations of forcible expulsions are resolved, in order to facilitate the full and durable reintegration of refugees back into their own communities.

[Geneva Refugee Expert Seminar, para. 85 and 89 and paras. 154 –158; Tehran Declaration, Declaration, para. 33]

Local integration

Host countries should explore possibilities for facilitating the full and permanent local integration of refugees who are unable or unwilling to return to their own country, including access to full citizenship and other social, economic, and cultural, and civil and political rights.

[Santiago Declaration, para. 137; Draft Declaration, Programme of Action, para. 64]

Resettlement

Countries should increase their resettlement quotas for those refugees who are unable or unwilling either to return to their own country or to permanently settle in their country of asylum. Resettlement quotas should not be conditional on the number of spontaneous asylum applications received by countries.

[Dakar Declaration, Recommendations for a Programme of Action, para. 17]

5) Measures to address the inequity in the international response to refugee crises

Proposed language:

States should take seriously their humanitarian and legal obligations, without discriminating between the different regions of the world, with regard to the principles of international cooperation, responsibility sharing, and the resettlement of refugees in their countries. In this regard, states should provide additional financial and technical support to those countries hosting large refugee populations to enable them to better discharge their humanitarian and legal obligations.

[Dakar Declaration, Recommendations for a Programme of Action, para. 17; Draft Declaration, Programme of Action, para. 63.]