

## **UNHCR AT 50: WHAT FUTURE FOR REFUGEE PROTECTION?**

*How countries treat those who have been forced to flee persecution and human rights abuse elsewhere is a litmus test of their commitment to defending human rights and upholding humanitarian values. Yet, fifty years after its inception, the states that first established a formal refugee protection system are abandoning this principle, and the future of the international refugee regime is under serious threat.*

### **FORCIBLE DISPLACEMENT: A GLOBAL CRISIS**

Fifty years ago, in the aftermath of the second world war, the international community established an agency to protect and assist the world's refugees. The Office of the United Nations High Commissioner for Refugees (UNHCR), marks its fiftieth anniversary on December 14. Although UNHCR was first established with a limited three year mandate, the forced movement of people has become increasingly more complex over the past fifty years. Today, no continent, and barely any country, in the world is untouched by the global refugee crisis. At the beginning of 2000 an estimated 14 million people were living as refugees, uprooted from their homes and forced to cross an international border. Nearly six million people were refugees in the Middle East, the vast majority of them Palestinian refugees – the world's largest and oldest refugee population; and there were more than three million refugees in Africa – every country on that continent has been affected by refugee movements.

Huge though they are, the global refugee numbers hide an even greater displacement crisis: that of the internally displaced, those people who are forced to flee their homes, often for the very same reasons as refugees – war, civil conflict, political strife, and gross human rights abuse – but who remain within their own country, do not cross an international border, and hence are not eligible for protection under the same international system as refugees. There are an estimated 30 million internally displaced persons in the world – the number may be even higher. The largest internally displaced population is in Sudan – where four million people have been uprooted by the civil war that has gripped the country for the past 20 years; an estimated 2.5 million people have been displaced by the civil conflict raging in Angola; 1.6 million people are displaced by conflict and human rights abuse in the Democratic Republic of the Congo (DRC); and 1.5 million people have been uprooted by the violence in Colombia.

### **A HUMAN RIGHTS PERSPECTIVE**

*States have largely regressed in their commitment towards protecting refugees over the past fifty years. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) was one of the first major human rights instruments to be established after the 1948 Universal Declaration of Human Rights. The Refugee Convention reflected states' sense of responsibility and moral obligation towards protecting refugees in the aftermath of the second world war.*

Protecting refugees is a core human rights issue. At the center of the international refugee regime is the fundamental right of any individual to seek and enjoy asylum from persecution in other countries. Enshrined in article 14 (1) of the 1948 Universal Declaration of Human Rights, the principle of asylum recognizes that when all other forms of human rights protection have failed, individuals must be able to leave their country freely and seek refuge elsewhere. The availability of asylum can literally be a matter of life or death for those at risk of persecution or abuse. Most refugees and displaced persons flee their homes because of precisely the same conflicts, persecution, and human rights abuses that Human Rights Watch reports on extensively in the course of its monitoring worldwide. In its efforts to bring an end to human rights violations, to eliminate the root causes of conflicts and to limit their brutality, Human Rights Watch also seeks to address the root causes of refugee and forced migration flows. At the same time, while such violations persist, Human Rights Watch also calls on governments everywhere to uphold their obligations towards protecting refugees and internally displaced persons, regardless of where they are from or where they seek refuge.

Unlike most other areas of human rights where it is possible to chart progress over the last decades, states have largely regressed in their commitment towards protecting refugees over the past fifty years. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) was one of the first major human rights instruments to be established after the 1948 Universal Declaration of Human Rights. While it clearly had shortcomings, not least in failing to incorporate an explicit right to seek and enjoy asylum, the Refugee Convention nevertheless reflected states' sense of responsibility and moral obligation towards protecting refugees in the aftermath of the second world war. Today many states are failing to uphold their obligations under the Refugee Convention, while some countries, particularly in Asia and the Middle East, have still not ratified the convention.

## **UNHCR: THE CHALLENGES AHEAD**

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On the eve of its fiftieth anniversary, UNHCR faces enormous challenges in its task of providing international protection and assistance to refugees worldwide and in helping countries seek durable solutions to their plight. Globally, there is less tolerance and more hostility towards refugees than there was fifty years ago and countries in the developed and developing world alike are closing their doors to refugees. In January 2001, former Dutch prime minister, Ruud Lubbers, will take over the post as U.N. High Commissioner for Refugees, replacing Sadako Ogata who has held the post for the past ten years ([see http://www.hrw.org/press/2000/10/rudd1025.htm](http://www.hrw.org/press/2000/10/rudd1025.htm)). As Lubbers prepares to take up his

new position, and as UNHCR both reflects on fifty years of service to refugees worldwide and looks to the future, Human Rights Watch has identified some of the major challenges facing the organization in the years ahead. These include, the growing threat to the right to seek and enjoy asylum; the funding crisis facing UNHCR and the disparity in the international response to refugee problems; responding to the problem of internal displacement; meeting the specific needs of particular groups such as refugee women, refugee children, urban refugees, and stateless persons; and ensuring the safety of UNHCR and other humanitarian workers.

### **Asylum under threat**

*The right to seek and enjoy asylum from persecution – a core principle of human rights protection and the very foundation of international refugee protection - is under serious threat, not least from the same states who were the primary architects of the international refugee regime fifty years ago. Although the vast majority of refugees continue to seek protection in the world's poorer nations, it is the wealthy industrialized states of Europe, North America, and Australia, that have adopted the most hostile and restrictive refugee policies designed to stem flows and keep people out. The retraction in refugee protection has been particularly pronounced in Western European states.*

### **Western Europe**

There has been a dramatic change in European asylum policy over the past ten to fifteen years. The convergence of growing political and economic instability in many parts of the world, as well as the increased availability of international communications and travel, meant that many more people were moving across continents by the 1980's – some to escape economic privations, others to escape conflict and human rights abuse. This trend coincided with the closure of legal immigration channels into Western Europe from the 1970's onwards. There was a dramatic increase in the number of asylum seekers, in particular between 1985 and 1992, when numbers increased from some 157,000 applicants, to 674,000 applicants per year.

In response to the growing numbers of asylum seekers coming to Europe from the mid 1980's onwards, and the perceived abuse of the asylum system by those not considered to be in need of international protection, Western European countries sought to harmonize their asylum policies over the past decade. The result has been a harmonization towards the lowest common denominator in terms of human rights and refugee protection standards.

First, many of the policies introduced by Western European governments have systematically obstructed the right to seek and enjoy asylum and have made it very difficult for those in fear of their lives to leave their country of origin freely and seek asylum elsewhere. These include visa requirements for nationals of common refugee producing countries, including those with well-documented human rights problems; carrier sanctions legislation to penalize companies that transport undocumented asylum seekers and migrants; and immigration "airline liaison officers" posted in main refugee-generating countries to assist airline officials in pre-departure checking of the authenticity of travel documents. Moreover, those asylum seekers who manage to evade

such controls are often penalized on arrival in their country of destination for their irregular means of arrival. Governments increasingly resort to detention of asylum seekers who enter a country “illegally” and as a deterrent for others. The means of entry can also impact negatively on asylum determination decisions.

In fact, many asylum seekers who flee persecution and human rights abuse leave their countries under extraordinary circumstances and have no opportunity to obtain visas or travel documents. The drafters of the Refugee Convention recognized this and included under Article 31 of the Convention provisions to prohibit countries from punishing refugees for illegal entry in the country of asylum, so long as the refugee travels directly from his or her country of origin and reports to the authorities in the country of destination without delay.

Second, Western European countries have sought to shift responsibility for providing protection to refugees on to other countries. They have achieved this through a variety of policies. These include, “safe third country” policies and readmission agreements, which allow governments to send refugees back to so-called “safe third countries” through which they have traveled en route from their country of origin without considering their asylum claim; “safe country of origin” policies that allow governments to reject, or consider as manifestly unfounded, asylum claims from individuals who are considered to originate from so-called “safe countries of origin” – this applies to all E.U. nationals applying for asylum within the E.U, for example; and policies or strategies aimed at containing refugees within their regions of origin, or moving them to so-called “safe areas” within their country of origin. All of these policies risk violating the most fundamental principle of international refugee protection – the principle of *non-refoulement*, whereby no state may return an individual to a country where their life or freedom is threatened. “Safe third country” policies, for example, risk setting in motion a chain of deportations of asylum seekers to countries where they can not be guaranteed access to a full and fair asylum determination process and can not be protected adequately against refoulement. The blanket exclusion of whole groups of people merely on the basis of their country of origin carries a high risk of refoulement.

Third, Western European governments have progressively diluted and undermined their obligations under the Refugee Convention over the past years with seriously detrimental consequences for those in need of international protection. One of the most worrying trends has been the overly restrictive interpretation and application of the Refugee Convention, in particular the refugee definition, which has resulted in excluding those at genuine risk of persecution from receiving international refugee protection. For example, some Western European states – such as Germany and France – have excluded individuals fleeing non-state agents of persecution or situations of state breakdown, such as those fleeing abuses in Algeria, from refugee protection. Some governments have rejected asylum claims from women fleeing persecution by private actors, such as family members, even though the abuse amounts to persecution and protection and adequate redress are not available in their own country. Other E.U. states have excluded individuals who have fled situations of generalized violence and civil war, such as in Colombia or Sri Lanka. More recently, several Western European governments, including Austria and the U.K., have suggested that the Refugee Convention is outdated and ill-equipped to deal with modern migration movements and have proposed that it should be adapted accordingly. The British Home Secretary Jack Straw in June 2000

proposed that E.U. countries should determine which nationalities and ethnic groups are most at risk of persecution and agree on quotas of asylum seekers from these countries. Asylum determination should be carried out in the regions of origin, and applications from those countries considered to be “safe” should not be entertained. Like all “safe country of origin” policies, these proposals risk refusing asylum to individuals in need of international protection merely on the basis of their nationality.

Finally, the growing barriers to legal entry into E.U. countries has meant that asylum seekers and migrants are increasingly turning to the services of opportunistic, corrupt, and dangerous human trafficking and smuggling syndicates who are able to circumvent routine migration controls. In June 2000, horror stories of women trafficked from the former Soviet Union and held in slavery-like conditions in Western Europe appeared in the press alongside an account of fifty-eight Chinese migrants killed from suffocation in the back of a truck as smugglers attempted to transport them into the United Kingdom. By the late 1990s, EU governments considered the trafficking and smuggling of persons to be two of the most serious developments in transnational organizations crime, and joined forces to in a concerted effort to end the practices. Unfortunately, however, protecting the human rights of trafficking and smuggled persons has not been the primary motive behind governments' efforts to tackle the problem. Instead, combating human trafficking and smuggling became a central part of migration control strategies for most governments, with little regard as to why asylum seekers and migrants make use of these rings, or the root causes of outflows. Even less attention has been paid to maintaining the right of all persons to seek and enjoy asylum from persecution.

The restrictive policies described above are implemented within a climate of hostility and xenophobia towards refugees, asylum seekers, and migrants. Politicians and the media have shamelessly manipulated xenophobic and racist fears in order to muster political support. Restrictive immigration policies have forced asylum seekers and migrants to make use of “illegal” and clandestine means to enter European countries, thus, in the eyes of politicians, the media, and general public, equating asylum seekers and migrants with criminals and resulting in punitive penalties. Refugees and migrants are generally blamed for the social and economic ills of society, including rising crime and rising unemployment. All of these trends have undoubtedly contributed to the alarming rise in racist violence and xenophobia against refugees, asylum seekers, and migrants throughout Europe, sometimes with the complicit involvement, or tacit approval, of law enforcement agents, and usually without effective sanctions against the perpetrators.

### ***Challenges for UNHCR***

As a national of an E.U. member state, Ruud Lubbers should make European asylum policy a top priority as he enters office and should take a firm stance against those E.U. governments that seek to erode the international refugee protection system. He should remind European governments that as the architects of the refugee regime they have a special responsibility towards abiding by their obligations and setting a positive example to governments elsewhere in the world – many of whom face a much heavier burden in terms of hosting mass refugee influxes, with far fewer resources at their disposal. UNHCR should continue to challenge those policies that blatantly violate international and European refugee and human rights standards. Particular attention should be paid to:

upholding the right of all individuals to leave their country and seek and enjoy asylum, including in E.U. member states;  
 ensuring that E.U. governments abide by their obligations under the 1951 Refugee Convention and its 1967 Protocol and countering efforts by E.U. countries to dilute their responsibilities under international refugee law;  
 actively addressing the asylum/ migration interface to ensure that migration control policies, including policies directed at combating human trafficking and smuggling, do not undermine the human rights of refugees, asylum seekers, and migrants, or violate international refugee protection standards;  
 combating the rise in violent racism and xenophobia throughout Europe that is fueled by restrictive immigration and asylum policies, racist and xenophobic rhetoric by politicians, the media, and public figures, and negative stereotyping and scapegoating of refugees, asylum seekers, and migrants

### ***The global picture***

Threats to asylum are not limited to Western Europe and other industrialized states. Elsewhere in the world, hostility towards refugees has grown in traditionally generous refugee hosting countries. Increasingly refugees are equated with threats to national and regional security, or are seen as an unsustainable drain on the local economy and environment. Governments have responded by closing their borders and restricting the rights and freedoms of refugee populations. Rising xenophobia and anti-refugee sentiment has resulted in attacks targeted against refugees.

In East and West Africa, and in South and South East Asia, Human Rights Watch has reported on governments' declining commitment to refugee protection.

In Tanzania (*see In the Name of Security: Forced Round-Ups of Refugees in Tanzania*, <http://www.hrw.org/hrw/reports/1999/tanzania/>)

Guinea (*see Forgotten Children of War: Sierra Leonean Refugee Children in Guinea*, <http://www.hrw.org/hrw/reports/1999/guinea>

and Thailand (*see Burmese Refugees in Thailand at Risk: Press Backgrounder*, <http://www.hrw.org/press/2000/05/thaiback0506.htm>

for example, governments have associated large refugee populations with serious threats to their national and regional security and have responded with border closures, forced repatriation, forced round-ups of refugees into refugee camps, withdrawal of assistance and protection in urban areas, and severe restrictions on freedom of movement.

In Guinea, which hosts the second largest refugee population in Africa (some half a million Sierra Leonean and Liberian refugees), inflammatory anti-refugee statements by President Lansana Conte in September 2000, led to widespread attacks, including gang rapes and sexual assault, against refugees living in and around the capital, Conakry (*see Refugee Women in Guinea Raped Government incites attacks on Sierra Leonean and Liberian refugees; UNHCR must act*, <http://www.hrw.org/press/2000/09/guinearefugees.htm> The situation in Guinea further

deteriorated throughout 2000, with armed attacks on and around refugee camps in the Forecariah and Gueckedou region on the border with Sierra Leone, killing both local civilians and refugees, displacing the local population, and forcing thousands of refugees to flee back into rebel-controlled areas of Sierra Leone. UNHCR was also targeted in the cross-border attacks and incursions. In September 2000 the head of UNHCR's office in Macenta on the Liberia border was murdered by unidentified attackers, and on December 7, 2000 the UNHCR office in Gueckedou was destroyed in fighting between government troops and rebels, during which hundreds of civilians were reportedly killed and thousands of refugees and local people fled for their safety.

Pakistan, after more than 20 years of hosting some 1.2 million Afghan refugees, closed its borders to new arrivals in November 2000, claiming insufficient resources to absorb the latest wave of refugees (*see Refugee Crisis in Afghanistan: Pakistan, Tajikistan Must Reopen Borders to Fleeing Afghans*, <http://www.hrw.org/press/2000/11/afghanistan.htm>

All of these developments threaten the protection and security of refugees and the availability of safe asylum. While many refugee hosting countries have legitimate security concerns, including cross-border incursions, militarization of refugee camps, and the fear of conflicts spilling over from neighboring refugee-producing countries, efforts by governments to address these concerns should not result in a curtailment of the rights and freedoms of refugees. In particular, refugees must be protected against forced return to countries where their lives and freedom may be threatened, and the availability of safe first country asylum must be preserved.

### ***Challenges for UNHCR, host and donor governments***

UNHCR should continue to address problems of security in order to ensure safe first country asylum in refugee hosting countries. In particular, UNHCR, in consultation and cooperation with host and donor governments, should prioritize efforts to:

- ensure that governments do not resort to measures such as border closures, push-

- backs, forced round-ups of refugees, arbitrary detention and confinement in camps in order to address security and other concerns, and forcefully condemn such actions if they do occur;

- locate refugee camps at a safe distance from the borders with neighboring

- countries, in accordance with international standards;

- maintain the civilian and humanitarian character of refugee camps and pursue

- efforts to separate civilian refugees from military and political elements with a view to excluding and prosecuting those suspected of having committed war crimes and crimes against humanity, in accordance with international standards;

- donor governments should provide funding and assistance for host countries to

- strengthen camp security, in particular to move camps away from the borders with neighboring countries, to strengthen law enforcement capacities in refugee

areas including through training and deployment of more police in and around refugee camps, to screen refugees in order to separate out combatants, and to investigate and prosecute those suspected of war crimes, or crimes against humanity

### **Disparity in the international response to refugee crises**

*Underfunding and donor funding cuts have left UNHCR in a dire financial situation, unable to fund some of its most basic assistance and protection programs, especially in Africa*

The economic, environmental, and security strain from years of hosting large refugee populations and the concomitant lack of international financial and other support, is a significant factor in the declining commitment to refugee protection in many developing countries. In 1999, the international community, most notably Western states, demonstrated its ability to respond with speed and generosity to the Kosovo refugee crisis. Funding and assistance poured in to the refugee camps in Macedonia and Albania, and relief agencies were overwhelmed with public offers of donations and assistance. Western governments also assisted by airlifting refugees out of Macedonia, under the “humanitarian evacuation program”, in order to ease the pressure on Macedonia and enable it to keep its borders open to in-coming refugees.

Clearly, the Kosovo crisis was unique both in the level of media, political, and public interest it generated, and the strategic military and geopolitical importance of the refugees whose flight occurred in the midst of the largest NATO offensive in mainland Europe. Refugee crises elsewhere fared less well. In Guinea, for example, the security of refugees was severely compromised due to the chronic lack of international funding and assistance. In 1999, UNHCR was unable to raise *any* funds towards a U.S.\$4million appeal to move the refugee camps away from the border with Sierra Leone where they were at serious risk of cross-border attacks and incursions. At the same time, the agency had a *weekly* budget of U.S.\$10million for the Kosovar refugees. UNHCR recently reported that in 1999 the international community spent some U.S.\$120 per person of concern to UNHCR in the former Yugoslavia, more than three times that spent in West Africa – about U.S.\$35 per person (*see <http://www.unhcr.ch/sowr2000/ch07.pdf>*).

Faced with serious security threats including cross border attacks and incursions from both Sierra Leone and Liberia, Guinea closed its borders to refugees from Sierra Leone in August 2000. The deteriorating security conditions in the border areas, where the majority of the refugee camps are located, and the murder of the head of UNHCR’s office in Macenta, on the Liberia border in September 2000, caused UNHCR to cease most operations in the border areas, leaving the refugees largely unprotected and unassisted and vulnerable to attacks and abuse. The international response to the crisis in Guinea has been negligible. The situation has hardly touched the world media headlines, international funding has been seriously lacking, and there has certainly been no airlifting of refugees to safety in Western countries (*see <http://www.hrw.org/editorials/2000/refugee1003.htm>*)



On the eve of its fiftieth anniversary, UNHCR announced that it would be forced to borrow US\$40 million from its working capital in order to finance its programs until the end of the year. Underfunding and donor funding cuts have left UNHCR in a dire financial situation, unable to fund some of its most basic assistance and protection programs, especially in Africa.

### ***Challenges for donor governments to UNHCR***

donor governments should provide adequate and equitable funding for UNHCR

programs, regardless of the nationality, race, location, or strategic significance of the refugee population;

donors should provide funding to assist host governments in unstable areas to

strengthen security in and around refugee camps in situations of mass influx and to meet the protection of particular groups of refugees, including refugee women and children;

donors should continue funding long-term protracted refugee situations, while at

the same time helping to find durable solutions, including providing support for voluntary repatriation and local integration, as well as making available third country resettlement opportunities

### **Protecting internally displaced persons**

*One of the greatest changes and new challenges for UNHCR is the growth in the number of internally displaced persons (IDPs) worldwide. For the first thirty five to forty years of its existence, most refugees were the result of inter-state conflict, usually within the context of Cold War politics. Today, the largest number of forcibly uprooted people in the world are displaced within their own countries, largely as a result of internal political or ethnic conflict.*

One of the greatest changes and new challenges for UNHCR is the growth in the number of internally displaced persons (IDPs) worldwide. For the first thirty five to forty years of its existence, most refugees were the result of inter-state conflict, usually within the context of Cold War politics. Today, the largest number of forcibly uprooted people in the world are displaced within their own countries, largely as a result of internal political or ethnic conflict. Although under the international refugee regime UNHCR's mandate is restricted to providing protection and assistance to refugees, the organization has been involved in assisting IDPs since the early 1970's in countries such as Bangladesh, southern Sudan and Cyprus following the partition.

More recently in the 1990's, UNHCR developed guidelines and criteria for its involvement with IDPs. In essence, UNHCR will only get involved with IDPs in situations where there is a clear link with refugee or returnee populations, or where there is the potential for internal displacement to develop into external refugee movements. UNHCR involvement depends on the request of the U.N. Secretary-General or the

General Assembly, the consent of the government and other parties to the conflict, and assurances of adequate funding, full access to the displaced, and staff security. UNHCR's involvement with IDPs should never undermine the right of displaced persons to seek and enjoy asylum.

The lack of an adequate international response to the problem of internal displacement came to the forefront in 2000, when the U.S. Ambassador to the U.N, Richard Holbrooke, brought the issue before the Security Council following a visit to Angola, where he was shocked by the appalling conditions for displaced persons. Holbrooke called forcefully for a single agency to take responsibility for IDPs, citing UNHCR as the most appropriate choice, and suggesting that the distinction between IDPs and refugees was unnecessary and detrimental to the protection of IDPs. His statements triggered a great deal of debate within the U.N. system, with most agencies favoring a coordinated inter-agency approach, rather than giving the mandate for IDPs to UNHCR. Ogata herself raised reservations about expanding UNHCR's mandate, and called instead for more concerted political action to address the root causes of internal displacement. External critics of an expanded UNHCR role with IDPs argued that by providing protection to IDPs UNHCR may inadvertently undermine refugee protection, particularly in those situations where governments reject asylum claims on the grounds that UNHCR is providing in-country protection.

Cognizant of the need to preserve the right to asylum, Human Rights Watch has nevertheless documented a serious gap in the protection of IDPs in numerous countries worldwide. In Chechnya, for example, Human Rights Watch reported on some of the serious problems facing civilians fleeing for safety during the Russian bombing offensive in late 1999 and early 2000 (see <http://www.hrw.org/press/1999/dec/chech1215b.htm> / <http://www.hrw.org/hrw/press/1999/nov/chech1125.htm>). Convoys of fleeing civilians were attacked by Russian forces with scores of casualties (see <http://www.hrw.org/hrw/press/1999/nov/chech1118.htm>) ; the borders between Chechnya and Ingushetia and other neighboring republics were repeatedly closed, causing huge delays and suffering; widespread extortion and ill-treatment of displaced persons at the border crossings was reported (see <http://www.hrw.org/hrw/press/1999/nov/chechb1104.htm> / <http://www.hrw.org/press/1999/dec/chech1214.htm>) ; and at one time the Russian authorities announced that no males aged between ten and sixty would be able to leave Chechnya, although this policy was later retracted under international pressure (see <http://www.hrw.org/press/2000/01/chech0112.htm>)

In Burundi, starting in September 1999, the government forcibly rounded-up and confined in "regroupment" camps around the capital, Bujumbura, some 350,000 people as part of a counter-insurgency campaign (see *Burundi: Emptying the Hills: Regroupment in Burundi* <http://www.hrw.org/reports/2000/burundi2/>) And, in Aceh, Human Rights Watch reported on efforts by both government and rebel groups to both restrict and manipulate the movement of displaced populations for their own political ends (see *Indonesia: Civilians Targeted in Aceh, A Human Rights Watch Press Backgrounder*, <http://www.hrw.org/press/2000/05/aceh05-back.htm>).

Human Rights Watch also reported on the chronic humanitarian conditions for IDPs in places such as Ingushetia (see <http://www.hrw.org/press/1999/dec/chech1202.htm>, Aceh (see

<http://www.hrw.org/press/2000/05/aceh05-back.htm>), Burundi (see <http://www.hrw.org/reports/2000/burundi2/>, and Sri Lanka (see <http://www.hrw.org/hrw/press/1999/aug/lanka0802.htm>.) Lack of humanitarian access to IDPs was attributed to three main reasons: deliberate obstructions by government and rebel groups to the delivery of humanitarian assistance; lack of access due to precarious security conditions and the inaccessibility of many IDP populations; and the failure by the international community to pay sufficient attention to the plight of IDPs.

Finally, Human Rights Watch reported on attempts by Russian authorities to forcibly return displaced Chechens to areas under Russian military control designated as “safe areas” (see <http://www.hrw.org/press/1999/dec/chech1217.htm>, <http://www.hrw.org/hrw/press/1999/dec/chech1223.htm>)

In all of these situations, Human Rights Watch urged governments to abide by their obligations under international human rights and humanitarian law as they pertain to displaced persons, and in particular to the U.N. Guiding Principles on Internal Displacement (Guiding Principles) (see [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html)). In many cases, Human Rights Watch found that UNHCR had a limited, non-existent, or ad hoc response to the protection of IDPs.

### ***Challenges for UNHCR***

UNHCR should continue to disseminate the Guiding Principles and should encourage governments to abide by them;

UNHCR should strengthen its advocacy on behalf of IDPs, including in those countries where it is not directly involved in providing assistance and protection. In particular, UNHCR should more forcefully condemn violations against IDPs if they occur;

UNHCR should ensure that its involvement with IDPs does not undermine refugee protection principles, in particular the right of all individuals to leave their country and seek asylum

### **The protection of particular groups of refugees**

*In the course of its monitoring, Human Rights Watch has drawn special attention to the needs of particular groups of refugees, including refugee women, refugee children, and urban refugees, and to the needs of stateless persons. Human Rights Watch has identified various shortcomings in UNHCR’s activities on behalf of these groups and have advocated for greater and more specialized protection.*

### ***Refugee women***

The protection of women is often seriously compromised in refugee settings. Women frequently make up a high proportion of refugee populations and there are large numbers of female-headed households, especially in conflict situations where men are either engaged in fighting or have been killed, or where male family members are farming, working, or trading outside the refugee camps. Human Rights Watch has monitored the protection of refugee women in countries ranging from Tanzania, Kenya, Guinea, Bangladesh, and Pakistan over the past ten years and noted various shortcomings in both UNHCR's and governments' response to women's protection needs.

In an in-depth study on the protection of Burundian refugee women in Tanzania, Human Rights Watch documented widespread sexual and domestic violence against refugee women and some serious inadequacies in UNHCR's initial response to the problem. To its credit, UNHCR had made significant improvements in the camps by September 2000, the date of the Human Rights Watch report publication. These included hiring two sexual and gender based violence assistants to follow up on cases of violence against women, two Tanzanian lawyers to assist women in taking their cases to court, and an international security liaison officer to train police deployed in the camps (*see Seeking Protection: Addressing Sexual and Domestic Violence in Tanzania's Refugee Camps*, <http://www.hrw.org/reports/2000/tanzania/>). In particular, Human Rights Watch drew attention to the lack of a coherent UNHCR policy to prevent and respond to the problem of domestic violence, both in the Tanzanian camps but also globally. Some UNHCR staff in Tanzania did not consider domestic violence to be a serious protection problem, viewing it instead as a "private matter" in which they could not intervene. There was no effective legal redress for victims of domestic violence, perpetrators usually went unpunished, and UNHCR failed to provide effective guidelines to its staff on how to respond to the problem. In general, Human Rights Watch found that UNHCR staff were insufficiently aware of the UNHCR guidelines on the protection of refugee women (*see* <http://www.unhcr.ch/refworld/refworld/legal/refpol/womguide.pdf>) and the prevention of sexual violence (*see* <http://www.unhcr.ch/refworld/refworld/legal/refpol/sexviol.pdf>), and were not held accountable for their full, speedy, and consistent implementation.

In Guinea, Human Rights Watch interviewed Sierra Leonean and Liberian refugee women, some of them as young as fourteen, who were raped—in many cases gang raped - sexually assaulted, and humiliated often in the presence of family members, by mobs of armed civilian militia, police, and soldier, in the wake of anti-refugee declarations by President Conte in September 2000. Human Rights Watch charged that UNHCR and the international community were slow to publicly condemn the brutal attacks against refugee women and called on the Guinean government and UNHCR to immediately investigate the incidents of rape and bring the perpetrators to justice.

### ***Challenges for UNHCR***

UNHCR should ensure a more institutionalized response to address consistently and effectively the protection needs of refugee women from the start of any refugee emergency and in times of crisis;

UNHCR guidelines on the protection of refugee women and the prevention of sexual violence should be more speedily and consistently implemented in all refugee situations and staff should be held accountable for their implementation; UNHCR should address the protection gap for victims of domestic violence and design and implement concrete policy guidelines for its staff on how to prevent and respond to the problem of domestic violence

### ***Refugee children***

Children suffer disproportionately during refugee crises, often with little official attention to their particular vulnerability. In our monitoring of the treatment of Sierra Leonean children in the refugee camps in Guinea (see *Forgotten Children of War: Sierra Leonean Refugee Children in Guinea*, <http://www.hrw.org/hrw/reports/1999/guinea/>) Human Rights Watch found that children who had been separated from their parents were frequently the most vulnerable. Separated children were at high risk of sexual and domestic abuse, forced and hazardous labor, beating and other physical ill-treatment in the camps. Many of them were denied access to education, or had sporadic access, as they were required to work by their “caretaker” families. Refugee children were exposed to serious risks due to the lack of adequate assistance in the refugee camps, and the close proximity of the camps to the border with Sierra Leone. Refugee girls were forced into prostitution in order to survive, and girls and boys frequently crossed the border into Sierra Leone in search of food to supplement their meager diet, risking attacks and abduction by Sierra Leonean rebels. UNHCR staff were insufficiently aware of the UNHCR guidelines on the protection of refugee children and were not held accountable for their full, speedy, and consistent implementation.

Elsewhere, in the United States Human Rights Watch found that UNHCR did not play a sufficient attention to the needs of unaccompanied minors in immigration detention, many of whom were held for lengthy periods of time by the U.S. Immigration and Naturalization Service (INS) in secure facilities alongside juvenile offenders, without adequate access to legal representation or being fully informed of their rights (see *Detained and Deprived of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service*, <http://www.hrw.org/hrw/reports98/ins2/> and *Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service*, <http://www.hrw.org/hrw/reports/1997/uscrcks/>)

### ***Challenges for UNHCR***

UNHCR staff should be held accountable for the full and effective implementation of the guidelines on the protection of refugee children;  
separated and vulnerable children should be identified and provided with adequate protection;  
girls should be protected from sexual abuse and exploitation and the risk of HIV transmission in refugee settings should be addressed as a matter of urgency;  
the civilian nature of refugee camps should be preserved to protect refugee children from recruitment into armed forces;  
UNHCR should give greater priority to the needs of unaccompanied children in detention;

### ***Urban refugees***

As well as meeting the needs of refugees in situations of mass influx, UNHCR is also responsible for assisting individual refugees and asylum seekers, many of whom come to urban centers seeking protection and assistance. These are usually termed “urban refugees”. Human Rights Watch has monitored the rights of urban refugees in countries varying from Thailand (*see Unwanted and Unprotected: Burmese Refugees in Thailand* <http://www.hrw.org/reports98/thai/>), Bangladesh (*see Burmese Refugees in Bangladesh: Still no Durable Solution*, <http://www.hrw.org/hrw/reports/2000/burma/>), and Malaysia (*see Living in Limbo: Burmese Rohingyas in Malaysia*, <http://www.hrw.org/reports/2000/malaysia/>), the Russian Federation and other countries in the Commonwealth of Independent States (CIS), South Africa (*see Prohibited Persons: Abuse of Undocumented Migrants, Asylum Seekers and Refugees in South Africa*, <http://www.hrw.org/reports98/sareport/>), Kenya and Tanzania.

In the course of its work, Human Rights Watch has identified a series of problems in UNHCR’s activities on behalf of urban refugees. First, in countries where UNHCR is responsible for refugee status determination, Human Rights Watch has found that the procedures are frequently ad hoc and inconsistent and lack adequate procedural safeguards. Many UNHCR offices are severely understaffed, with too few protection officers responsible for status determination, resulting in long delays and inadequacies in procedures. Applicants are provided with insufficient information about the asylum procedures and access to UNHCR offices is often difficult. Independent legal counsel is rarely provided to asylum seekers. Rejection letters for asylum seekers whose claims have been turned down are often inadequate, failing to provide individuals with sufficient information about why their claim was rejected. Neither is there an independent appeal process for rejected claimants and UNHCR often does not make public the basis on which status determination decisions are reached. Policies for providing refugees with documentation are often inconsistent and ad hoc. Finally, there is a conflict of interests between UNHCR’s role as adjudicator in these procedures and more generally as advocate for the refugees.

The second problem identified by Human Rights Watch relates to restrictions on freedom of movement and confinement of refugees in camps. Closely linked to this is the third problem of lack of assistance for urban refugees in many countries. Countries, such as Thailand, Kenya, Tanzania, and Guinea, for example, have implemented policies requiring urban refugees to move to rural refugee camps in order to qualify for UNHCR protection and assistance, and access to durable solutions, including third country resettlement. These strategies have, in part, been a response to the security problems associated with refugees in urban areas. But they have also severely restricted the freedom of movement and freedom of choice of residence of large numbers of refugees, while at the same time denying refugees access to basic assistance, including access to food, shelter, education, and health care in urban areas. The policy of confining refugees in camps is ill advised on several counts. In many cases, the protection of refugees can not be guaranteed in camps, especially where they are located too close to the borders with neighboring countries and are vulnerable to cross-border attacks and incursions. Women and children are at particular risk of sexual and domestic violence in refugee camps.

In many cases, UNHCR has actively participated in policies to move urban refugees and restrict provision of assistance to camps, even when the protection of refugees can not be guaranteed and there are compelling protection reasons to continue to provide assistance and protection in urban areas.

### ***Challenges for UNHCR***

In countries where UNHCR has primary responsibility for refugee status determination it should adopt more transparent, consistent, and accountable procedures. These include:

- easy and safe access to the UNHCR office;
- clear information regarding the status determination process in a language that refugees can understand and that is available prior to the first interview;
- clear and transparent basis for refugee status determination based on independent and objective human rights information;
- rejection letters that clearly lay out in detail the reasons why an individual's case has been rejected;
- a more transparent and independent appeals process, preferably to an independent organ from the one making the initial decision;
- access to independent legal assistance and representation for asylum seekers throughout the process;
- a faster decision making process, particularly in those countries where asylum seekers receive no assistance or support;
- consistent provision of refugee status documentation

In addition:

- UNHCR should be more outspoken against government policies to confine refugees in camps – particularly where force is used to round refugees up, where freedom of movement and other civil and political rights are denied, and where the protection of women and children and other high risk groups is threatened;
- UNHCR should seriously reconsider its policies not to provide assistance to urban refugees when assistance in camps is available, particularly where the protection and security of refugees cannot be guaranteed in camps and where refugees in urban areas would otherwise be left destitute

### ***Stateless persons***

As well as its mandate to protect and assist refugees, UNHCR also has another, lesser known mandate, to protect stateless persons and to prevent and reduce statelessness. The U.N. General Assembly and UNHCR's Executive Committee (ExCom) have mandated UNHCR to act as the intermediary between states and stateless persons, as provided for under the 1961 Convention on the Reduction of Statelessness, and to provide technical guidance and assistance to states on the preparation and implementation of their nationality legislation. In some areas of the world UNHCR has effectively applied this mandate. In central and eastern Europe, UNHCR has provided guidance and assistance to newly formed states on the formation of nationality laws, including in the Commonwealth of Independent States,



the Czech and Slovak Republics, the Baltic states, the Caucasus, and in the former Yugoslavia. Elsewhere, such as in Ethiopia and Eritrea, or in Burma, Bangladesh, and Malaysia, for example, UNHCR has been less successful in implementing its mandate on statelessness.

The reasons for this inconsistency are multifarious. First the governments in central and eastern Europe were open to UNHCR's involvement in nationality issues – governments elsewhere have been more resistant. Second, UNHCR itself devotes too few resources to its activities to prevent and reduce statelessness. There is only one senior legal officer with the assistance of a junior legal officer responsible for all UNHCR's activities on statelessness and nationality. Third, and closely linked to the above, is the lack of donor interest and support for UNHCR's activities regarding statelessness and nationality, particularly outside Europe.

Human Rights Watch has identified three areas where UNHCR has inadequately applied its mandate on statelessness. The first relates to refugee status determination. In reports on Rohingya refugees in Bangladesh (*see Burmese Refugees in Bangladesh: Still no Durable Solution*, <http://www.hrw.org/hrw/reports/2000/burma/>) and Malaysia (*see Living in Limbo: Burmese Rohingyas in Malaysia*, <http://www.hrw.org/reports/2000/malaysia/>), for example, Human Rights Watch found that insufficient attention was paid to denial of nationality as a grounds for granting refugee status. Human Rights Watch argued that denial of Burmese nationality was a key factor in the severe discrimination and accompanying human rights abuses faced by Rohingya and should be taken into account when determining refugee status.

Second, more attention should be paid to ensuring that children born as refugees are not rendered stateless, particularly in situations where the nationality of their parents is disputed. It is very important that the births of all children born in refugee camps are properly registered and documented with the authorities in the country of asylum, or if this is not possible with UNHCR. This will help to ensure that children, like the Rohingya refugee children born in Malaysia, are able to activate their right to a nationality whether they return to their own country, remain in the country of asylum, or are resettled to a third country.

Third, and finally, greater attention should be paid to the link between nationality and durable solutions to refugee problems. Statelessness can be a cause, consequence, and obstacle to the resolution of situations of forced displacement. In many situations, like the case of the Rohingya refugees in Bangladesh and Burma or Bhutanese refugees of ethnic Nepali origin in Nepal, questions of nationality are central to finding a lasting resolution to the refugee problem. Until refugees are provided with full citizenship rights in their country of origin, their return will not be sustainable and, as in the case of the Rohingya refugees, problems of displacement are likely to re-occur.

### ***Challenges for UNHCR***

UNHCR should more actively apply its mandate on statelessness and nationality throughout the world without geographical limitation;



more resources should be devoted to UNHCR's work on statelessness and nationality and the number of staff working on the issue should be increased; greater weight should be given to the link between uncertain nationality or statelessness and persecution in refugee status determination procedures; children born in refugee camps should be automatically provided with birth registration documents in order to avoid potential statelessness in the future; UNHCR should address nationality as a core element in the search for durable solutions to refugee problems, both in terms of governments who obstruct refugees' right to return on grounds of disputed nationality, and also in terms of ensuring that refugee return is sustainable and that refugees can return with full respect for their human rights

### **Protecting humanitarian workers**

*Over the past years, UNHCR has been required to work in increasingly dangerous environments. The militarization of refugee camps and the spill-over of conflicts into countries of asylum; the increasing number of internally displaced persons requiring protection in the midst of violent internal conflicts; the failure of the international community to take decisive political action to solve crises; the substitute of humanitarian action in the absence of strong political will; and the general instability and absence of rule of law in so many of the countries in which UNHCR works, have exposed its staff to unacceptable levels of insecurity with fatal consequences.*

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During the Great Lakes refugee crisis in the mid 1990's, for example, 36 UNHCR staff were killed or went missing and were presumed killed. In 1998, the head of UNHCR's northern Caucasus office, Vincent Cochetel, who was responsible for providing assistance to displaced persons in Chechnya, Ossetia, and Ingushetia, was kidnapped from his home in the town of Vladikavkaz by unidentified abductors and imprisoned for 317 days in a series of underground cellars, chained to a metal bed. In September 2000, three UNHCR staff members, Carlos Caceres, Pero Simundza, and Samson Aregahegn were brutally murdered in West Timor, the head of the UNHCR office in Macenta, Guinea, Mensah Kpognon, was murdered and another staff member, Djeya, abducted. The whereabouts of local UNHCR staff were unknown after the UNHCR office in Gueckedou, Guinea, was destroyed on December 7, 2000.

Such attacks highlight once again the extreme dangers for humanitarian workers worldwide. The murders provoked a global protest and prompted UNHCR to withdraw all staff from West Timor, as well as from the border areas of Guinea. At the same time,

they left refugees in these areas almost completely unprotected and unassisted with no outside witnesses to abuses.

***Challenges to UNHCR and to donor and host governments***

the international community should provide greater protection to humanitarian workers;

more financial support should be given to UNCHR to strengthen security arrangements for its staff;

the international community should provide assistance to host governments to ensure that refugee camps are not located too close to the border with neighboring countries; to separate military elements from civilian refugee populations and ensure the civilian and humanitarian nature of refugee camps and settlements; to maintain law and order in refugee camps and settlements; and to protect humanitarian workers so that they can continue providing assistance and protection to displaced persons in dangerous locations;

stronger efforts should be made to ensure that those responsible for attacks against humanitarian workers are arrested and prosecuted for such crimes