



IOM International Organization for Migration



**UNHCR**  
The UN Refugee Agency

# PROTECTING REFUGEES AND OTHER PERSONS ON THE MOVE IN THE ECOWAS SPACE



## Acknowledgments

This publication is the product of collaborative efforts. It was produced by the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), with contributions from the Economic Community Of West African States (ECOWAS) Commission and the Office of the High Commissioner for Human Rights (OHCHR). It is based on four regional workshops on the Protection of Refugees and other Persons on the Move in West Africa which were held jointly in 2010. We would also like to thank the International Labour Organization (ILO) and UNICEF for their participation in the workshops this publication is based on.

## © IOM/UNHCR 2011

All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of IOM and UNHCR as the source.

**First edition, January 2011**

## Published by IOM and UNHCR:

### IOM

Regional Office for West and Central Africa  
Résidence Hôtelière des Mamelles  
B.P. 16838 Dakar-Fann, Sénégal  
Tel. : + 221 33 869 62 00  
Fax : + 221 33 869 62 33

### UNHCR

Regional Representation for West Africa  
Liberté 6 Lot n°188  
B.P. 3125 Dakar, Sénégal  
Tel. : + 221 33 867 62 07 / 08  
Fax : + 221 33 867 62 15 / 16

This publication is funded by UNHCR and the US State Department Bureau of Population, Refugees and Migration (PRM).



IOM International Organization for Migration



**UNHCR**  
The UN Refugee Agency

# PROTECTING REFUGEES AND OTHER PERSONS ON THE MOVE IN THE ECOWAS SPACE





## Foreword

West Africa is characterized by a high level of migration, and particularly intra-regional migration. In addition, despite growing stability in most countries, the region continues to host thousands of refugees, most of whom were forcibly displaced during the conflicts of the 1990s and early 2000s. Recent trends show not only that intra-regional mobility is increasing, compounded by factors such as climate change and environmental degradation, but also that West Africa is a region of destination for migrants and refugees coming from other parts of Africa and the wider world.

The increasingly mixed nature of migratory movements means that refugees and migrants will often be travelling together. In this context, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) are working together with governments, the Economic Community of West African States (ECOWAS), international organizations, civil society and other stakeholders to ensure that the rights of all persons on the move are upheld and that their protection needs are addressed.

In 2010, a series of joint workshops was held to promote a protection sensitive response to these movements in the ECOWAS space. This publication, which recapitulates the issues examined during the workshops, is meant to further facilitate cooperation between the different actors involved in the protection of persons on the move. We hope it will serve as a useful reference document and look forward to intensifying our cooperation with all our partners in West Africa.



Abye MAKONNEN  
Regional Representative  
**IOM**



Rufin Gilbert LOUBAKI  
Regional Representative a.i.  
**UNHCR**



## TABLE OF CONTENTS

|   |            |
|---|------------|
| <b>Introduction</b> .....   | <b>9</b>   |
| <b>Chapter 1</b> .....  | <b>13</b>  |
| Mixed Migration Flows in West Africa  |            |
| <b>Chapter 2</b> .....  | <b>19</b>  |
| The ECOWAS Space and the ECOWAS Commission  |            |
| <b>Chapter 3</b> .....  | <b>23</b>  |
| The ECOWAS Free Movement Protocols and their<br>Application to Migrants and Refugees  |            |
| <b>Chapter 4</b> .....  | <b>29</b>  |
| Refugee Protection in West Africa   |            |
| <b>Chapter 5</b> .....  | <b>39</b>  |
| UNHCR 10-Point Plan of Action and the Dakar Conference on<br>Refugee Protection and International Migration in West Africa            |            |
| <b>Chapter 6</b> .....  | <b>47</b>  |
| The Human Rights Based Approach to Migration and the<br>Mechanisms of Protection of Persons on the Move                               |            |
| <b>Chapter 7</b> .....  | <b>55</b>  |
| Trafficking in Persons  |            |
| <b>Chapter 8</b> .....  | <b>67</b>  |
| Trafficking in Persons and Refugee Protection   |            |
| <b>Chapter 9</b> .....  | <b>73</b>  |
| Children on the Move  |            |
| <b>Chapter 10</b> .....   | <b>83</b>  |
| Cooperation and Referral of Victims of Trafficking and Other Persons<br>on the Move who have Specific Protection and Assistance Needs |            |
| <b>Conclusion</b> .....   | <b>93</b>  |
| <b>Tools and Resources</b> .....  | <b>95</b>  |
| <b>Selected References</b> .....  | <b>101</b> |



## Introduction

Over the past decade, mixed migratory movements have been of increasing importance, both in terms of numbers and in terms of political significance at the national, regional and global levels. As a result, state and non-state actors have reflected on how best to address mixed migration issues. The International Organization for Migration (IOM), which is committed to facilitating humane and orderly population movements, and the United Nations High Commissioner for Refugees (UNHCR), which is mandated to protect and assist refugees worldwide, have been at the forefront of initiatives to address this new phenomenon in accordance with their respective mandates.

All actors concerned recognize that improved respect for the human rights of migrants and improved protection for refugees within these mixed flows can only be achieved through considerably enhanced multilateral cooperation and through a shared commitment to implement new, practical arrangements to address identified challenges. In 2006, UNHCR launched the **10-Point Plan of Action on Refugee Protection and Mixed Migration**, which sought to move states and other partners beyond a focus on control of irregular migration and toward a broader examination of the relationships between protection solutions and migration at the global level. As a tool providing operational guidance, the 10-Point Plan highlights opportunities for strengthening partnerships on the ground, and for promoting a protection and human rights perspective to problems related to asylum and migration. At the regional level, in 2000, IOM launched the **Migration Dialogue for West Africa** (MIDWA) which was designed to encourage ECOWAS (Economic Community Of West African States) member states to discuss common migration issues and concerns in a regional context for which immediate solutions may not be forthcoming at the national level. This was followed by a series of activities aimed at building the capacities of both the ECOWAS Commission and its member states to better respond to migration challenges in West Africa<sup>1</sup>. In 2008, the ECOWAS Commission

---

<sup>1</sup> Throughout this publication, the term West Africa refers to the ECOWAS region which comprises the following countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

developed a sub-regional plan of action on migration: the **ECOWAS Common Approach on Migration**.

With a view to implementing the 10-Point Plan of Action on Refugee Protection and Mixed Migration in the West Africa region, and to build on existing regional frameworks for the management of international migration, a **Regional Conference on Refugee Protection and International Migration in West Africa** was held in Dakar in November 2008. The conference was co-hosted by UNHCR, IOM and ECOWAS, in cooperation with the United Nations High Commissioner for Human Rights (OHCHR) (See *Chapter 5*). Following the conference, a regional inter-agency Follow-up Group was created by IOM, UNHCR and OHCHR, and joined by the International Federation of Red Cross/Crescent and the International Labour Organization (ILO), to ensure that the recommendations of the conference were pursued and implemented. Different activities have been developed in this framework to improve responses to mixed migration in West Africa and to promote the protection of the different categories of persons on the move.

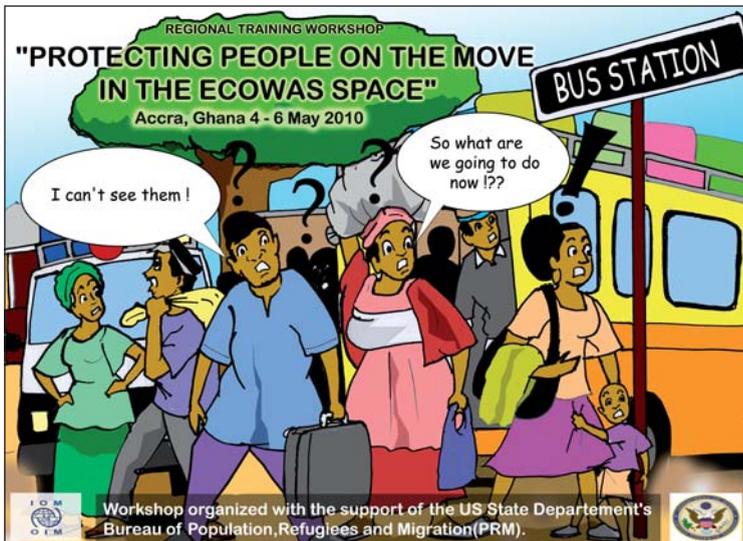
Based on the priorities identified during the 2008 Dakar Conference, **a series of four regional workshops** were held in 2010 to build on the following conference recommendations:

- Finding solutions through free movement of ECOWAS citizens [including refugees] within the ECOWAS region
- Enhancing Border Management while Ensuring Protection
- Combating trafficking and implementing the Ouagadougou Plan of Action
- Addressing challenges to Human Rights protection

The 2010 workshops, which targeted key stakeholders from all fifteen ECOWAS countries, aimed at creating a **common understanding of the different categories of people on the move and their specific rights and needs**, as well as ensuring refugee protection within these mixed flows and exploring possibilities for inter-organization referrals for refugees, victims of trafficking and other vulnerable migrants in need of protection and assistance. Through the broad participation of a variety of state and non-state actors, including representatives of Eligibility Committees, Immigration authorities, Counter Trafficking

Committees, Human Rights Institutions, and Non Governmental Organizations (NGOs), the workshops sought to ensure that the key partners working on asylum and migration better understand each other's roles and objectives and learn to work together to **strengthen their respective national protection environments**.

The first two workshops, organized by IOM, in cooperation with UNHCR, ECOWAS, ILO, OHCHR and UNICEF, were entitled **“Protecting People on the Move in the ECOWAS Space”** and took place in Ouagadougou (April 7-9) and Accra (May 4-6). These workshops targeted representatives of ECOWAS member states and civil society organizations from two groups of countries: Benin, Burkina Faso, Niger and Togo on one hand, and Ghana, Liberia, Nigeria and Sierra Leone on the other. Later in the year, UNHCR and the ECOWAS Commission, in cooperation with IOM, OHCHR, ILO and UNICEF, organized two additional regional workshops under the title **“Protecting Refugees and other People on the Move in the ECOWAS Space”**, which targeted the seven remaining ECOWAS countries, namely Guinea, Mali, Cote d’Ivoire and Senegal (Dakar-November 3-5), and The Gambia, Guinea Bissau and Cape Verde (Bissau, November 9-11).



Poster designed for the Accra regional workshop “Protecting People on the Move in the ECOWAS Space” © IOM

Conclusions and recommendations from these sub-regional workshops are now being carried forward to the **national level**. A report of the workshops was produced to enable participants to share the acquired knowledge and tools within their organizations and government agencies upon return. Tailored follow-up activities are now being organized in participating countries. In November and December 2010, IOM and partners organized **follow-up workshops** at the national level in eight countries to validate the outcomes of the regional workshops. These events gathered together different national-level actors, including institutions working in child protection, women's rights, and migration and refugee issues, to discuss the particular issue of referral mechanisms for persons on the move with specific assistance or protection needs. This collaboration allowed concerned actors to define operational measures at the local level, including the creation of referral mechanisms and joint screening forms, the establishment of information-sharing mechanisms, and the identification of those areas of the service provision framework that remain weak and require increased collaboration.

As a result of this series of regional workshops, **key actors from all fifteen ECOWAS countries** have benefited from trainings on the protection of different categories of people on the move, have gained a common understanding of key concepts and issues, have been able to share ideas and experiences, and have been provided with tools for operational cooperation. The **objective of this publication** is to capture the main themes and recommendations of the regional workshops in order to assist state and non-state actors in the region in their efforts to strengthen cooperation at the regional and national levels and to ensure a **protection-sensitive approach to mixed migratory movements** in West Africa.

# Chapter 1.

## Mixed Migration in West Africa

Every year, tens of thousands of migrants and refugees make the journey from their place of origin to another West African country, elsewhere in Africa or towards Europe and/or other industrialised countries. This chapter provides an initial orientation to these mixed movements and highlights some of the main protection challenges confronting those who move, especially those who move irregularly.

### 1.1 Defining ‘mixed migration’

The term ‘mixed migration’ refers to **complex population movements**<sup>1</sup> : people using the same routes and modes of transportation to travel, but moving for different reasons. The main characteristics of mixed migration flows include the **multiplicity of factors driving the movement**, and the **different needs and profiles** of the persons involved. These mixed movements may include migrants, some of whom may have specific needs, refugees, unaccompanied and separated children, or victims of trafficking. Some individuals may fall into more than one of these categories. Mixed migration frequently occurs **irregularly**, without the requisite documentation, and often involves human smuggling and trafficking.

➔ **Migrant** is a broad term for which no universally accepted definition exists. It is usually understood to cover all people who move **voluntarily** to another country or region for a certain length of time. It is not to be confused with short-term visitors, such as tourists and traders. People migrate for a variety of reasons, but often with the aim of improving their lives and economic situation.

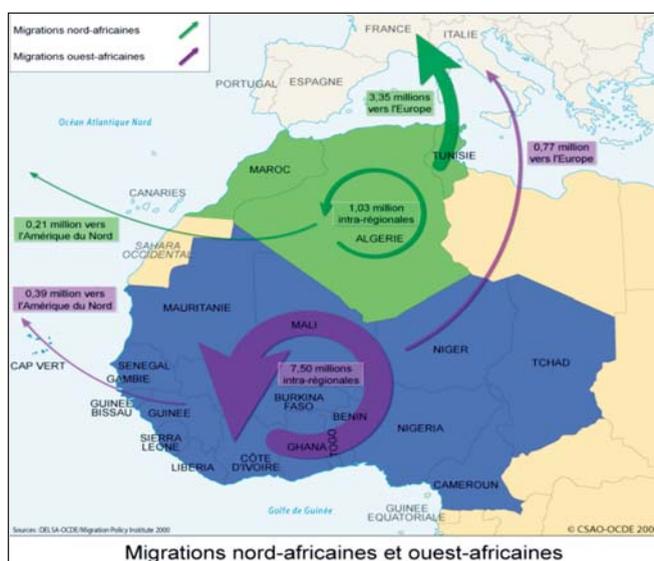
➔ **Refugees** are fundamentally different from migrants as they are **forced to flee** their country to escape persecution, armed conflict or generalized violence. There is an internationally accepted definition of who is a refugee and they have a specific status and rights under international law. States have specific obligations under international law towards them, including, and most importantly, the obligation of **non-refoulement**, which protects refugees from being returned to a country where their lives or freedom could be threatened. Identifying refugees within broader migratory flows can be challenging, but is necessary to ensure that they are granted access to protection.

<sup>1</sup> *Glossary on Migration*, IML, IOM 2004

## 1.2 Mixed migration in West Africa

West Africa has always been a place of significant mobility and mixing of populations<sup>2</sup>. Over the years, the dynamics of these movements have become **more complex**, with most countries in the region now being countries of **origin, transit and destination**, for both West Africans and migrants from other parts of Africa and the rest of the world (for instance, from Asia). The complexity of the movements owes to a number of different factors, including West Africa’s strategic position as a gateway to North Africa and Europe, a history of armed conflicts, unequal access to resources and opportunities, the effects of climate change and environmental degradation, and the regional framework on free movement.

The map below<sup>3</sup> illustrates the nature of movements within and beyond the region. In 2006, **intra-regional migrations represented 90 percent** of all West African migratory movements, amounting to an estimated **7.5 million migrants**, making these flows at least seven times greater than those towards Europe, America and the rest of the world. In 2010, ECOWAS countries also hosted close to **160,000 refugees and asylum seekers**, including almost 120,000 originating from West Africa.<sup>4</sup>



Migration in North and West Africa, 2006

While those travelling to Europe and the rest of the world constitute less than 10% of West African migratory flows, increasingly **strict immigration policies** in receiving countries in Europe have had widespread implications for the region. Over the past two decades, travel routes have become more and more dangerous. In the 1990s, tightened controls on air and sea routes resulted in new land and sea paths opening towards Europe, especially via North Africa. However, recent trends show that these paths are also being abandoned due to the effective interception and border policies of European states. Departures are now being pushed further and further south, and perilous desert routes are increasingly used.

### 1.3 Mixed motivations and legal statuses

The underlying motivations for West African mobility are extremely **diversified** and combine political, economic, social and environmental dimensions. **Mobility is often seen as a strategy** for diversifying risks in highly uncertain economic and political contexts. Many leave to seek employment, often for a specific season. While the region has regained stability since 2004, **people with international protection needs** continue to be part of mixed migratory flows, and include **asylum seekers and refugees** from ECOWAS member states, other African countries and even Asia. Despite the fact that refugees and asylum seekers account for a relatively small portion of the mixed flows in West Africa, their **specific status under international law** must be respected, even when they move alongside others who do not have protection needs (See Chapter 4). **Victims of trafficking**, who might also be part of these mixed flows, equally have specific needs which need to be addressed (See Chapters 7 and 8).

The **reasons for moving may change** during the migration process, which can **complicate the assessment of a person's protection needs and legal status**. Individuals may, for example, flee their country of origin and be granted refugee status. If they face undue hardship in the country of asylum (for instance, if they encounter security problems,

<sup>2</sup> *West Africa as a Migration and Protection area*, Florianne Charière and Marion Frésia, 2008. This paper was prepared as the background document for the Regional Conference on Refugee Protection and International Migration in West Africa organised in Dakar in November 2008, and contains in-depth information on protection and mixed migration issues in West Africa.

<sup>3</sup> *The Mobility of the Population in West Africa*, French Ministry of Foreign and European Affairs, 2008

<sup>4</sup> UNHCR statistics as of September 30<sup>th</sup> 2010

are unable to sustain their family or send their children to school), they may decide to move onwards, possibly in an irregular manner. This continued movement does not result in a loss of their refugee status, as long as the individuals continue to have a well founded fear of persecution. However, these secondary movements and the fact that the refugees may have been smuggled or have become victims of trafficking make it more difficult to identify them as refugees.

The vast majority of people travelling in mixed flows do not fit any particular label or established legal category, such as that of a refugee or a trafficked person. The **human rights of all persons on the move** should however be upheld regardless of their status (*See Chapter 6*). These persons may also have **humanitarian needs** which merit special attention.

## 1.4 Protection challenges

Long and dangerous fragmented journeys have become a common feature of global migration. Despite formal guarantees of free movement in the ECOWAS space, persons moving within the region may still face serious **risks during their migration process**, irrespective of the reason for their movement. Migrants and refugees, who are often unaware of the hazards and consequences of migrating in an irregular manner, may be exposed to exploitation, physical abuse, sexual violence, and detention. Individuals with protection needs, who use the same routes and means of transport as other migrants, not only face the same risks but tend to be more vulnerable to exploitation and abuse. Factors contributing to their **vulnerability** include the forced nature of movement, unprepared departure and involuntary separation from family members, lack of support networks and resources, and past traumatic experiences. Persons on the move may also be forced to interrupt their journey, for instance due to lack of resources or adequate documentation, and become **stranded**.<sup>5</sup>

---

<sup>5</sup> Stranded migrant is a general term sometimes used to refer to a person unable to return to his/her previous country of residence or of origin and compelled to remain in a country of transit or destination/settlement. This situation might be due to circumstances in the country of origin, a position of prolonged detention or practical difficulties. Stranded migrants may be individuals whose claim for refugee status has been rejected. They may experience irregularity of status although not systematically. From *People on the Move – Handbook of selected terms and concepts*, The Hague Process on Refugees and Migration & UNESCO, 2008

### **FACTBOX – Main risks faced during the migration journey and/or within the countries of destination or transit:**

- Persons on the move, especially when moving irregularly, risk being requested to pay bribes, robbed, extorted or subjected to violence by authorities, drivers, smugglers or other criminals;
- Women and girls, but also men and boys, are exposed to sexual abuse and exploitation including being forced to buy their way by submitting to sexual advances;
- Persons moving irregularly, especially women and children, risk becoming victims of trafficking all along the migration route;
- Unsuccessful asylum-seekers can become stranded in the host country and find themselves without access to protection and without means to regularize their status or to return home;
- Stranded migrants, who have run out of resources and options face heightened risks of exploitation and abuse;
- Persons on the move can face hostility, discrimination and xenophobia, both in transit regions where many congregate, and in countries of destination.

## **1.5 Managing mixed migration**

Migration policies of ECOWAS member states, including the negotiation of bilateral agreements with European countries, have mainly focused on South-North migration and on strengthening controls at the northern and western borders of the ECOWAS space. These policies have not always fully taken into account the dynamics of intra-regional migration, or the protection impact of they may have on those moving. It is imperative that migration management and security measures are developed and implemented so as to **guarantee the full respect of the human rights of persons on the move**. With its 2008 **Common Approach on Migration** and the recommendations agreed upon at the 2008 **Dakar Conference**, the ECOWAS Commission has started to address mixed migration issues from a regional perspective, recognizing the specificity of asylum seekers, refugees, victims of trafficking and the related protection imperatives.

In order to manage mixed migration flows in a **protection-sensitive manner**, inter-state collaboration is essential during all phases of the migration and/or displacement process: **pre-departure, transit, arrival and post-arrival**. Legal and operational responses need to take into consideration the different profiles and needs of the persons concerned to ensure the **safety, dignity and well-being of all persons on the move**. That an individual may have travelled through irregular channels does not disqualify them from enjoying the rights and protection to which they may be entitled, for example, as an asylum seeker, a victim of trafficking or a child. Those who do not fall under any particular protection regime should receive counselling on further options, such as legal onward migration or voluntary return. Finally, to adequately meet the needs for protection and assistance of the different categories of persons on the move, a protection-sensitive approach requires that state and non-state actors alike be aware of the nature of mixed migration, of the **protection mechanisms available** and the **mandates and programs** of all other actors concerned (See *Chapter 10*).

## Chapter 2.

### The ECOWAS Space and the ECOWAS Commission

The **Economic Community Of West African States** (ECOWAS) is a regional group of fifteen countries, founded in 1975. Its member states are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The ECOWAS Treaty was adopted in May 1975 and revised in 1993. The mission of the ECOWAS is twofold: 1 – to **promote cooperation and integration**, with a view to establishing an economic and monetary union as a means of stimulating economic growth and development in West Africa; 2 – to **consolidate states' efforts to maintain peace, stability and security in the region**.



*The 15 ECOWAS Member States (in green on the map), GéoAtlas Map/RFI*

#### 👉 ECOWAS institutions:

- The Commission
- The Community Parliament
- The Community Court of Justice
- ECOWAS Bank for Investment and Development

## 2.1 Migration within the ECOWAS space

In 2007, the West African population was estimated at 315 million inhabitants, a figure that is expected to double by 2050. Such a **sharp demographic increase** will, if it is not absorbed at least partially by enhanced economic development in the region, lead to **additional human mobility**, particularly amongst the region's youth (60% of the population is under 25). According to a recent study by UN-HABITAT and UNEP on the state of African cities in 2010, five of the ten fastest growing cities in Africa for the period 2005-2010 are located in West Africa, both in absolute terms (Lagos, Abuja, Ouagadougou, Abidjan and Dakar) and proportionally (Abuja, Ouagadougou, Lomé, Bamako, Nia-mey). This important trend of urbanisation is projected to continue in the coming years, influencing human mobility in the region. **Cultural ties**, such as those amongst the Manda in Côte d'Ivoire, Guinea, Mali and Senegal, still favour both short- and long-term migratory movements within the region.

All countries in West Africa are places of origin, transit and destination of complex population movements. Migratory movements between West Africa and other parts of world as well as intra-regional movements raise significant **legal, socio-economic and protection concerns**. Niger, for instance, faces a multiplicity of migration-related challenges as it is at the crux of a broad range of migratory movements, such as the temporary movement of Fulani herdsmen searching for greener pastures; the cross-border trafficking of children to work in gold mines; refugees on secondary movement; migrants in transit who rely on the informal economic sector for survival, mostly around Agadez; increasing emigration by often highly-educated Nigeriens seeking better opportunities abroad; and increased internal displacement due to environmental degradation, droughts and flooding. The complexity of these migratory movements, with their national specificities, calls for **enhanced cooperation amongst all stakeholders** along migration routes.

## 2.2 The ECOWAS Commission and migration management

The ECOWAS Commission is a key actor in managing migration flows in the region. In this framework of highly complex challenges and inherent opportunities, the Commission plays a pivotal role as a political platform

for dialogue, as a catalyst for regional projects, and as an advocate for coherent and coordinated regional migration policies. In line with the growing attention paid to international migration at the global level, in January 2008, a broader migration perspective was introduced at the regional level with the adoption of the ECOWAS **Common Approach on Migration**. This political framework has extended the field of action for the ECOWAS Commission to encompass all the major aspects of migration, including those not covered by the Free Movement Protocols (See Chapter 3). The **Migration and Development Action Plans**, which are an integral part of the Common Approach, set the following priority areas:

- Promotion of free movement within the ECOWAS zone
- Promotion of the management of regular migration
- Harmonisation of policies related to migration and development
- Control of irregular migration and human trafficking, particularly of women and children
- Protection of the rights of migrants, asylum seekers and refugees
- Accounting for the dimension of gender in migration

The Department for Free Movement and Tourism has taken the lead within the ECOWAS Commission for the **implementation of the ECOWAS Common Approach**. Several initiatives have been developed in this context: a regional media network for free movement has been created (See Chapter 3), a process has been launched to establish a “Schengen”-type visa for ECOWAS member states called ECOVISA, contributions have been made towards the IOM project for Migration Profiles in West and Central Africa which include a regional profile for the ECOWAS region, and support has been given to cross-border cooperation projects, to name just a few. The ECOWAS – Spain Fund for Migration and Development is an important initiative made possible by a generous contribution of the Government of Spain. The 10 million-euro fund will be used to finance a large number of projects both from ECOWAS member states and civil society organisations in West Africa in the fields of free movement of persons and irregular migration as well as migration and development.

Given the **multifaceted nature of migration**, other departments within the ECOWAS Commission have been active directly or indirectly in the field of migration and free movement. The Research and Statistics Department, for example, gave particular attention to the economic and

development impact of migration in 2006 when drafting, in cooperation with the West African Economic and Monetary Union (WAEMU), the Regional Strategy Paper entitled 'Regional Integration Growth and Poverty Reduction in West Africa: Strategies and Plan of Action'. The **Department of Humanitarian Affairs** has been a key player in humanitarian assistance and protection. Finally, a **Trafficking in Persons Unit (TIP Unit)** was created within this department in 2005 with the technical support of UNODC. The mission of the TIP Unit is the "creation of institutions, procedures and strengthening of capacities of member states to fight trafficking in persons and the protection of the rights of children". One of the TIP Unit's main focuses has therefore been to build the capacity of states to develop and implement national plans of action and to institute national task forces. The Unit is also responsible for ensuring capacity building on specific issues, such as witness protection and prevention of trafficking (*See Chapter 7*).

## Chapter 3.

# The ECOWAS Free Movement Protocols and their Application to Migrants and Refugees

Economic integration is the fundamental mission of ECOWAS, and the free movement of persons and goods within the sub-region was identified as an indispensable factor in the integration process. Over the past 30 years, a framework for the progressive implementation of the rights of entry, residence, work and establishment for all ECOWAS citizens has been rolled out in the region.

### 3.1 The Free Movement Protocols

West African states, fully conscious of the benefits that the free circulation of goods and persons would bring to the region, quickly followed the signing of the ECOWAS Treaty of 1975 with the **1979 Protocol relating to the Free Movement of Persons, Residence and Establishment**. The 1979 Protocol and the four supplementary protocols that followed it provide for the citizens of the fifteen ECOWAS countries a legal framework for the progressive implementation of the rights of entry, residence, work and establishment, which were already instituted by the ECOWAS Treaty, in its Article 59. These rights are detailed in the corresponding Protocol on Free Movement and elaborated upon in two supplementary protocols on the Right of Residence and the Right to Establishment, as well as in two additional protocols clarifying procedural matters and legal notions.

#### **FACTBOX – Article 59 of the ECOWAS Treaty: Immigration**

- Citizens of the community shall have the right of entry, residence and establishment, and member states undertake to recognise these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto.
- Member states undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights referred to in paragraph 1 of this Article.
- Member states undertake to adopt, at national level, all measures necessary for the effective implementation of the provisions of this Article.

The 1979 Protocol on Free Movement aimed to achieve the “complete freedom of movement” over a period of fifteen years, and following three phases of implementation:

- **First phase, 1980 – 1985: the right of entry**

Article 3 of the Protocol gives the right to all ECOWAS citizens to travel to any ECOWAS member state for up to 90 days without a visa, provided that the individual carries a valid passport and a health certificate (yellow card). If, however, the citizen decides to extend the stay beyond 90 days, an authorisation by the competent authorities is required. Member states reserve to themselves in article 4 of the Protocol the right to refuse admission to any Community citizen they consider to be an «inadmissible migrant » under their domestic laws. This provision continues to provide broad scope to member states to undercut the purpose of the protocol through the elaboration of overly restrictive domestic inadmissibility laws. The Protocol also covers the guarantees accorded to a citizen in case of expulsion.

- **Second phase, 1986 – 1990: the right of residence**

The 1986 Supplementary Protocol establishes the right of residence for all ECOWAS citizens wishing to take up employment in one of the member states. The right to seek and carry out income earning employment is conditioned upon possession of an ECOWAS residence card or permit. The protocol also grants the right to remain in the host country after the end of the employment period, in line with national provisions. The right of residence is to be implemented by the issuance of a residence permit granting equal rights to all ECOWAS citizens. In 2000, it was decided to abolish the residence permit, underlining the political desire to establish a Community of citizens. However, this decision has not yet been implemented. The protocol further lists the minimum guarantees for the individual in case of an expulsion, including, among others, the right to appeal the decision and the right to a reasonable period before enforcement of the decision. All the fundamental rights of migrant workers are guaranteed.

- **Third phase, 1990 – 1995: the right of establishment**

The right of establishment broadens the economic scope of the right of residence. Article 1 of the Supplementary Protocol states that the “*Right of Establishment means the right granted to a citizen who is a*

*national of a Member State to settle or establish in a Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals".* Of particular importance, the principle of non-discrimination is mentioned in Article 4(1): *"Each Member State shall undertake to accord non-discriminatory treatment to nationals and companies of other Member States"*. However, the following paragraphs mitigate this obligation to non-discriminatory treatment when a state *"is not in a position to ensure such a treatment"* for a given activity or when special regimes exist for non-nationals and are *"justified for the maintenance of public order or the protection of public health"*. The 1990 Protocol, in Article 4(5), also provides that decisions should be taken within the ECOWAS on the mutual recognition of diplomas, certificates and other qualifications.

### 3.2 The Protocols and refugee protection

The Protocols on Free Movement within ECOWAS were not adopted as instruments of protection for persons on the move. Nevertheless, this regional legal framework, combined with domestic legal provisions governing residence and naturalisation, offers a range of **possibilities for refugees from ECOWAS member states to claim rights and access durable solutions** in ECOWAS countries, in addition to rights already granted by the refugee conventions. UNHCR and the ECOWAS Commission enjoy a common understanding of the applicability of the protocols' provisions to refugees. This common vision is enshrined in the Memorandum on **'Equality of treatment for refugees with other citizens of ECOWAS Member States in the exercise of Free Movement, Right of residence and Establishment'** which was adopted in 2007.

In practice, many refugees displaced by conflicts in West Africa, most of whom have been staying in their host country for many years, choose to **integrate locally**. However, rather than applying for naturalisation, many prefer **obtaining residence and work entitlements** without giving up their original citizenship. The ECOWAS Protocols present these refugees with the unique possibility to achieve 'local integration' through greater regional mobility, as guarantees under the Protocols

allow them not only to establish themselves in their host country but also to retain their nationality and all related privileges<sup>1</sup>. (See *Chapter 5 for an example of the application of the Protocols to former refugees from Liberia and Sierra Leone.*)

### **FACTBOX – Applying the ECOWAS Protocols to refugees who are nationals of ECOWAS countries**

At a technical meeting in Accra in August 2007, the ECOWAS confirmed that refugees who are nationals of an ECOWAS member state continue to benefit fully from their West African citizenship and from the ECOWAS Protocols on freedom of movement, residence, and establishment. In this context, it recommends among other things that governments:

- Facilitate obtaining ECOWAS passports or national identity cards for their nationals who are resident in another country.
- Issue identity cards and residence permits to refugees at reduced cost and ensure their renewal.

### **3.3 Challenges and opportunities**

Some achievements stand out in the thirty years of implementation of the free movement framework. Great progress has been made in the field of free movement, as ECOWAS citizens may now travel without visas within the sub-region. Legal foundations for the right of residence and establishment have been instituted, and in many cases these rights have been implemented and citizens have started to take advantage of them. Lastly, the growing use of the ECOWAS travel documents can also be considered a success. As a whole, the ECOWAS Protocols, the ECOWAS Common Approach on Migration, and the Memorandum on Equality of Treatment for Refugees provide a wide range of **possibilities for secure, legal, protection-sensitive migration** in the region.

<sup>1</sup> *Promoting integration through mobility: free movement and the ECOWAS Protocol*, RP No. 150, Adepoju, A., Boulton, A. & Levin, M., UNHCR, 2007

Nevertheless, despite the enormous achievement represented by the ECOWAS Free Movement Protocols, more needs to be done to facilitate intra-regional migration. Some of the challenges slowing the implementation of the free movement framework are intrinsic to the Protocols themselves, such as the *de jure* prohibition of double citizenship for community citizens. Other challenges lie in the **harmonisation of domestic laws** with the norms established in the regional protocols, and the slow implementation of the second and third phases of those protocols. The right of establishment has not yet been fully implemented in the sub-region.

Adequate implementation also requires **broad education** of the ECOWAS population and immigration and law enforcement officials about the rights under the free movement framework. Many ECOWAS citizens remain unaware of these rights, and cases of harassment at borders are regularly brought to the attention of the ECOWAS Commission. To address these issues, the ECOWAS Commission has launched several initiative, such as the creation of a regional media network for free movement to inform the population of their rights and shed light on improper actions by border officials. These initiatives, which are carried out in cooperation by the ECOWAS Commission, member states, and concerned actors, will lead to **improved implementation of the Protocols and related instruments**. This will, in turn, **reinforce the protection framework** for all persons on the move in the ECOWAS space.



## Chapter 4.

# Refugee Protection in West Africa

Amongst those on the move, many are fleeing persecution, human rights violations and armed conflict in their home countries and may be entitled to special protection as refugees under international law. In order to effectively respond to mixed migratory flows in West Africa, a basic understanding of both the international refugee protection regime and the refugee situation in West Africa is essential.

### 4.1 The refugee definition

A refugee is any person who meets the eligibility criteria in the refugee definition provided by relevant international or regional refugee instruments, UNHCR's mandate, and/or national legislation.

➡ Article 1 A(2) of the **1951 Convention relating to the Status of Refugees**, as modified by its **1967 Protocol**, defines a **refugee** as any person who *“owing to 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.”* Stateless persons, meaning those with no nationality, must be outside the country of their former habitual residence.

➡ The **1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa**, while containing the same definition as the 1951 Refugee Convention in Article 1 A(2), expanded the definition to include, under Article I(2), those who are compelled to leave their place of habitual residence *“owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [their] country of origin or nationality,”* in order to seek refuge in another country.

All of the countries in West Africa have signed and ratified the 1951 Geneva Convention, its 1967 Protocol and the 1969 OAU Convention, thereby accepting the refugee definitions in these instruments. Under

**UNHCR's mandate**, a refugee is defined as any person who is outside their country of origin or habitual residence and is unable or unwilling to return there owing to a well-founded fear of persecution for one of the reasons set out in the 1951 Convention; or due to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

**Some persons are considered undeserving of international refugee protection** under the exclusion clauses of the 1951 Convention and the 1969 OAU Convention on account of being responsible for war crimes, crimes against humanity or crimes against peace, and will be denied refugee protection on that basis. Similarly, those who have committed serious non-political crimes or acted against the purposes and principles of the United Nations, or, in the case of the 1969 OAU Convention, those of the Organization of African Unity, cannot benefit from refugee status.

## 4.2 Refugee Status Determination

**Refugee status determination (RSD)** is the legal or administrative process undertaken by states and/or UNHCR to determine whether a person is a refugee, in accordance with national, regional and international law. The responsibility for determining refugee status falls primarily to states, although UNHCR does conduct RSD under its mandate in those countries that have not ratified any of the refugee instruments, do not have a national asylum procedure in place and/or are unable or unwilling to comprehensively assess asylum applications in their countries. **In West Africa, RSD is undertaken by the governments**, with UNHCR participating in most government eligibility committees, either in an advisory or less frequently in a voting capacity. The determination of refugee status can be undertaken individually or on a group basis.

In most contexts, **refugee status is determined under individual procedures**, during which the applicant's individual circumstances and eligibility for refugee status are examined. National legislation and/or administrative procedures generally define the state institutions and/or authorities involved in the RSD process, as well as the different stages of the asylum process and the procedural safeguards and guarantees that exist.

In certain circumstances, states or UNHCR will grant **refugee status to individuals on a *prima facie*, or group, basis**. This generally occurs in the context of mass influx, usually as a result of conflict or generalized violence, where those seeking international protection arrive in such numbers and at such a rate as to render individual determinations impracticable, and where there is general agreement that those who are fleeing satisfy the refugee definition given the situation in their home country. Individuals recognized as refugees on a *prima facie* basis enjoy the same status and rights as those who are granted refugee status under individual procedures.

👉 To maintain the **civilian and humanitarian character of asylum**, combatants and other armed elements are not entitled to access RSD procedures and to benefit from refugee status.

### 4.3 Cessation of refugee status

Refugee status remains valid until it is established that **international protection is no longer necessary or justified**. Two different types of situations can lead to the **cessation of one's refugee status** under the provisions of the 1951 Convention.

- Refugee status may cease following certain **voluntary acts on the part of the refugees themselves**, for instance if they voluntarily re-availed themselves of the protection of their country of origin, or if they acquire a new nationality and enjoy the protection of the country of their new nationality.
- Refugee status may also cease when there have been fundamental, stable and **lasting changes in the country of origin**, such that the refugee no longer has a well founded fear of persecution. In West Africa, the latest refugee population for whom the cessation clause was invoked was Sierra Leoneans who had fled their country during the civil war in the early 1990s. Given that the 2002 peace agreements had led to positive and durable changes in Sierra Leone, it was decided in 2008 to invoke the “ceased circumstances” cessation clause on the ground that those who had fled the country because of the conflict could no longer be considered refugees<sup>1</sup>.

<sup>1</sup> Even if these ceased circumstances exist, compelling reasons arising out of previous persecution may justify the need for some refugees to retain their refugee status. For instance, it may be unreasonable to expect survivors of torture to return to their country even if the situation has improved dramatically.

## 4.4 International protection of refugees

The term **international protection** refers to the protection that is accorded to individuals or groups by the international community on the basis of international law. International protection is provided in the absence of national protection by the individuals' own government. It is the **host state that bears the primary responsibility for providing international protection to refugees**. UNHCR, however, is also mandated by the UN General Assembly to provide protection to refugees and to provide support to states in this task.

The international protection of refugees begins with securing their **admission** to the country of asylum, ensuring access to **fair and efficient asylum procedures** to determine their refugee status, and ensuring that their **fundamental human rights** are respected. States are obliged to ensure that refugees enjoy the rights entitled to them under the 1951 Refugee Conventions and the 1969 OAU Convention, and other international and regional human rights instruments to which they are parties. These rights include, most importantly, the right not to be forcibly returned to a country where their life or freedom would be threatened (the principle of *non-refoulement*). For those who are recognized as refugees, the need for international protection ends only when a durable solution to their situation is found.

👉 The **principle of non-refoulement**, which prohibits the return of refugees in any manner whatsoever to countries or territories where their lives or freedom may be threatened because of their race, religion, nationality, membership of a particular social group or political opinion, is the cornerstone of international protection. It is embodied in Article 33(1) of the 1951 Convention and Article II(3) of the 1969 OAU Convention. It applies to asylum seekers seeking entry at the borders of a country and to those who have already entered the country and have requested protection from return.

👉 **Asylum seekers and refugees should not be penalised for their illegal entry** in the country from which they are seeking protection (provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence). However, demands for increased border control and anti-immigrant sentiments have led some States to detain and criminally prosecute growing numbers of persons entering their territory in an irregular manner, regardless of the reason for doing so. In this context, it is imperative

that the distinctive rights and needs of asylum seekers and refugees be recognized, and specifically that the non-penalisation for illegal entry be respected (Article 31 of the 1951 Refugee Convention).

### FACTBOX – Main rights under the 1951 Refugee Convention

Main rights under the 1951 convention (with certain exceptions and/or restrictions), in addition to the rights of *non-refoulement* and non-penalization:

- the right of free access to the courts;
- freedom of religion;
- freedom of movement;
- the right to public education, in particular at the elementary level;
- the right to public assistance;
- the right to wage-earning employment or self-employment;
- the right to identity documents and a travel document.

As a corollary to the enjoyment of rights, refugees also have certain **duties and obligations** to conform themselves with the laws and regulations of the country of asylum. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa also prohibits refugees from engaging in subversive activities against any member state of the African Union.

## 4.5 Durable solutions

One of UNHCR's primary responsibilities is to support governments in finding **durable solutions** for refugees. Three durable solutions are generally considered:

- **Voluntary repatriation:** Most refugees return home as soon as circumstances permit, with UNHCR often providing returnees with transportation and start-up packages, including cash grants, income-generating projects and/or practical assistance. Under international standards, the return of refugees must be **voluntary** and take place in conditions of **safety** and **dignity**. Each individual should be allowed to make a free and informed decision regarding their return.

- **Local integration:** Some refugees cannot return home because the conflict from which they fled has not ceased (or a new conflict has arisen) or because they continue to fear persecution upon return. In such circumstances, integration in the country of asylum may be the best opportunity of starting a new life. Local integration is a complex and gradual process, involving legal, economic, social and cultural adaptations. Local integration generally culminates in the acquisition of citizenship in the host country.
- **Resettlement:** Amongst the refugees who cannot return home, some face protection risks or have specific needs that cannot be addressed in their country of first asylum. UNHCR helps to resettle many of these refugees to a third country willing to accept them; providing, perhaps, the only safe and viable durable solution. The number of refugees who are resettled to third countries is extremely small, some 1% of the total refugee population. As such, it is reserved for the neediest cases amongst a refugee population.

These three traditional durable solutions complement each other and can be strategically combined to provide a comprehensive solution to a particular refugee community. Beyond these classic durable solutions, legal migration opportunities are also increasingly being discussed as another opportunity for some refugees to re-build their lives in a new country.



*Supporting local integration through income generating activities © UNHCR*

## 4.6 Refugee situation in West Africa

As noted above, all member states of ECOWAS have acceded to the Geneva Convention relating to the Status of Refugees (1951) and its additional Protocol (1967), as well as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), which specifically addresses refugee movements in Africa.

The major forced displacements of the 1990s and early 2000s in West Africa, mainly from Sierra Leone, Liberia and Ivory Coast, have given way more recently to increased stability throughout the region. This has allowed for major **voluntary repatriation movements** to take place. In 2007, a tripartite agreement was signed between the Governments of **Mauritania** and Senegal and UNHCR, resulting in the ongoing repatriation of Mauritanian refugees from Senegal. After the situation had fundamentally improved in **Sierra Leone**, the ‘changed circumstances’ cessation clause was invoked for Sierra Leonean refugees in 2008 and UNHCR facilitated voluntary repatriation for those wishing to return. Encouraging signs of peace and stability in **Liberia** have also allowed UNHCR to support voluntary repatriation to Liberia, preparing the ground for a possible invocation of the cessation clause for this refugee population in the near future. The current situation in **Côte d’Ivoire** is the exception to these positive trends in national peace building and peace consolidation. While there had been progress in the implementation of the 2007 Ouagadougou Political Agreement, which paved the way for the return of Ivorian refugees, the crisis triggered by the 2010 presidential elections has resulted in a new outflow of refugees and an increase in internal displacement.

In addition to voluntary repatriation, **local integration** has become a realistic option for a considerable number of refugees, especially in situations where invocation of the cessation clauses is being considered. UNHCR has worked to enhance the legal protection of refugees in countries of asylum, including through increased access to documentation, basic services and livelihoods opportunities. UNHCR has also advocated for a more effective utilization of the **ECOWAS Protocols on free movement, right of residence and establishment** so as to secure an alternative legal status for refugees originating from the ECOWAS space. Notwithstanding their specific rights under the international refugee protection regime, refugees originating from ECOWAS countries may be entitled to additional benefits under regional legal frameworks (*for an example, see Chapter 5*).

Despite these positive developments, however, West Africa continues to be characterized by **protracted refugee situations**, with some countries continuing to experience political strife or finding it difficult to sustain post-crisis recoveries, as in Côte d'Ivoire. At the end of 2010, the West Africa region hosted approximately **150,000 refugees**, mainly Ivorians, Ghanaians, Liberians, Mauritians, Senegalese and Togolese, and **9,000 asylum seekers**.

### **FACTBOX – Internally displaced persons (IDPs)**

**Internally displaced persons** are those who have been forced to flee their homes as a result of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, but who have not crossed an international border. While the protection needs of refugees and the internally displaced are often similar and interlinked, unlike refugees, internally displaced persons remain within their own country.

**The 1998 Guiding Principles on Internal Displacement**, adopted by the United Nations, provides a framework to prevent internal displacement and to protect and find solutions for those who have been displaced. In October 2009, the African Union adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the **Kampala Convention**, which is the first legally binding instrument with continental scope in this field. The Convention will not go into effect until 15 states have signed and ratified it, a goal that many hope will be achieved in 2011. State and non-state actors, both national and international, cooperate to protect and assist persons who have been internally displaced.

In West Africa, Côte d'Ivoire hosts the largest internally displaced population, which consisted of approximately 500,000 persons at the end of 2010. Due to the crisis that arose following the presidential elections, new displacement has occurred.<sup>2</sup>

---

<sup>2</sup> As of 30 January 2011, approximately 30,000 persons had been displaced due to the post electoral crisis.

### **FACTBOX – Stateless persons**

A **stateless person** is one who is not considered to be a national by any state under its law. A stateless person can also be a refugee when, for example, they are forced to leave their country of habitual residence due to a well-founded fear of persecution. However, not all stateless persons are refugees, and not all refugees are stateless.

Because refugee and statelessness problems sometimes overlap and may be linked, the UN General Assembly mandated UNHCR to work to prevent statelessness and to ensure that the rights of stateless persons are respected. UNHCR encourages countries to accede to the two international instruments relating to statelessness:

- **the 1954 Convention relating to the Status of Stateless Persons**, which aims to ensure a basic standard of treatment for stateless persons; and
- **the 1961 Convention on the reduction of Statelessness**, which aims to avoid future cases of statelessness.

The most significant operation addressing statelessness issues in West Africa is being carried out in Côte d'Ivoire where UNHCR and partners work to identify situations and populations at risk of statelessness, raise awareness, protect stateless populations through the provision of assistance and documentation, and advocate for the ratification and implementation of the two statelessness conventions.



## Chapter 5.

# UNHCR 10-Point Plan of Action and the Dakar Conference on Refugee Protection and International Migration in West Africa

Refugees and asylum seekers increasingly move within broader population flows alongside migrants and other persons on the move. It is important to address such mixed movements in a coherent and comprehensive manner, taking into account states' concerns to protect their borders as well as the various protection needs of persons on the move. This had already been recognized in the "Agenda for Protection" which includes among its six goals the protection of refugees within broader migration movements<sup>1</sup>.

### 5.1 The 10-Point Plan of Action

To help states address mixed migration movements in a protection-sensitive manner, UNHCR launched a **10-Point Plan of Action on Refugee Protection and Mixed Migration** (10-Point Plan) in 2006.<sup>2</sup> The 10-Point Plan provides suggestions to assist states in ensuring that persons in need of international protection who are travelling within broader mixed migratory movements can be identified and provided with an appropriate response. At the same time, the Plan also includes suggestions to ensure that the specific needs of people who are not refugees are identified and addressed.

The Plan is built around traditional tools used to respond to refugee situations tailored to the specific situation of mixed migration, but it also includes new tools. It follows an approach that is

- comprehensive
- cooperative
- transnational

<sup>1</sup> *Agenda for Protection*, UNHCR, 2003. The Agenda for Protection and its Programme of Action, which resulted from the Global Consultations on International Protection, sets out an agreed framework for pursuing protection priorities globally. It was endorsed in 2002 by UNHCR's Executive Committee and welcomed by the General Assembly.

<sup>2</sup> *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, UNHCR, 2007, Rev.1

The Plan proposes a **comprehensive approach** to mixed migration by recognizing that protection objectives will only be achieved if incorporated within a broader migration strategy addressing the phenomenon in all its aspects. The 10-Point Plan is not a tool solely for UNHCR. It suggests a **cooperative approach**, based on partnership between relevant stakeholders (government authorities, international and local governmental and non-governmental organizations, civil society, etc) in order to maximize respective strengths and capacities and to appropriately distribute responsibilities. The Plan also calls for a **trans-national approach**, involving countries of transit, destination and origin.

### **FACTBOX – The 10 points of the Plan of Action:**

1. Cooperation among key partners
2. Data collection and analysis
3. Protection-sensitive entry systems
4. Reception arrangements
5. Mechanisms for profiling and referral
6. Differentiated processes and procedures
7. Solutions for refugees
8. Addressing secondary movements
9. Return arrangements for non-refugees and alternative migration options
10. Information strategy

The implementation of the Plan has been supported through a three-year project including:

- Four **experts roundtables** to explore practical ways to operationalise refugee and human rights protection in the context of mixed migration: Controlling Borders while Ensuring Protection (Geneva, 2008); Different People, Different Needs (Tunis, 2009), The Return of Non-Refugees and Alternative Migration Options (Geneva, 2009) and Regional Cooperation on Refugees and Irregular Movements (Manila, 2010).

- **Regional stakeholder conferences** to promote the development of regional strategies in the following four regions: Gulf of Aden (Sanaa, Yemen, May 2008), West Africa (Dakar, Senegal, November 2008), Central America (San Jose, Costa Rica, November 2009), and East and South of Africa (Dar Es Salam, Tanzania, September 2010). A fifth conference will focus on Central Asia. It will take place in Almaty, Kazakhstan in March 2011.
- **A compilation of practical examples, the ‘10-Point Plan in Action’<sup>3</sup>.** This publication includes practical examples and tools used (questionnaires, check-lists, list of references, etc.) from 55 different countries throughout the world to provide further guidance on the Plan and facilitate its implementation. The publication was provisionally released in June 2009. The final release is envisaged for 2011.

## 5.2 The Dakar Conference

The **Regional Conference on Refugee Protection and International Migration in West Africa** took place in Dakar, Senegal on 13 and 14 November 2008. It was the second of five regional conferences UNHCR has organized under a three year EC-funded project. The objective of this series of conferences was to sensitize key stakeholders in different regions to the protection challenges of mixed migration and to promote the 10-Point Plan of Action as a framework for the development of **regional protection-sensitive migration strategies**.

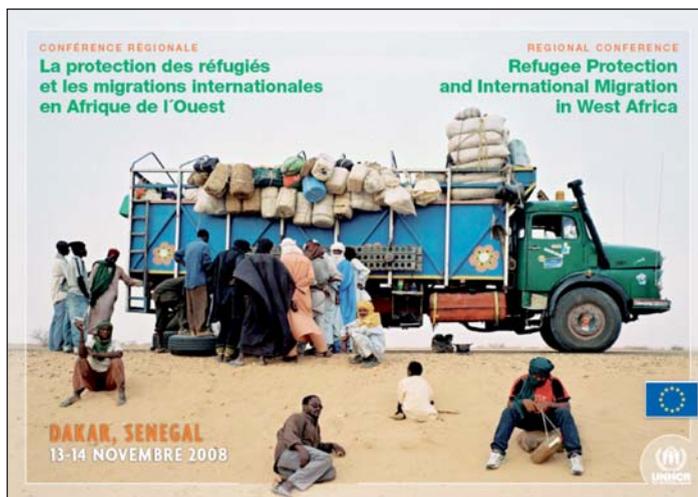
The Dakar Conference was convened jointly by UNHCR, IOM, and ECOWAS, in cooperation with the Office of the High Commissioner for Human Rights (OHCHR). The meeting brought together over 200 representatives of the fifteen ECOWAS member states as well as regional organizations, including the European Union, the African Union, and the East African Community, various donors, international agencies, local and international non-governmental organizations and refugees.

Three topics were at the centre of discussions: (i) the implementation of the ECOWAS free movement protocols<sup>4</sup>, including their use to further local integration of refugees in the region; (ii) the enhancement of government capacities to identify and protect refugees; and (iii)

<sup>3</sup> *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, UNHCR, 2009

<sup>4</sup> ECOWAS Protocol relating to the Free Movement of Persons, Residence and Establishment, 1979

improvements in the regional response to human trafficking. The ECOWAS Free Movement Protocols and Common Approach on Migration, UNHCR's 10-Point Plan of Action and the IOM-supported Migration Dialogue for West Africa (MIDWA) served as a basis to develop a **collaborative strategy**.



*Refugee protection and mixed migration: the 2008 Dakar Conference*

The Conference closed with the issuance of **8 recommendations** aimed at **enhancing the protection response to mixed migration** in West Africa.

### **Recommendations:**

#### **(1) Solutions through free movement of ECOWAS citizens within the ECOWAS region**

The ECOWAS Protocols entitle ECOWAS citizens to visa-free entry, to work and to reside in all ECOWAS countries provided they have a valid travel document and international health certificate and are not otherwise inadmissible. These entitlements apply both to migrants and refugees who are nationals of ECOWAS member states. The potential of these Protocols need to be taken further through increased sensitisation of the authorities and the populations concerned, as well as fuller application by member states (See *Chapter 3*).

## **EXAMPLE – Local integration through the application of the ECOWAS Protocols**

When peace was restored in Sierra Leone and Liberia, the governments of Liberia, Sierra Leone, and Nigeria, ECOWAS and UNHCR signed a multi-partite agreement in 2007 to locally integrate remaining Liberian and Sierra Leonean refugees in Nigeria. The agreement acknowledged that the ECOWAS Free Movement Protocols could be applied to refugees from Sierra Leone and Liberia in Nigeria.

Hundreds of Sierra Leonean and Liberian refugees registered in Nigeria have opted for local integration. To this day, Sierra Leone and Liberia have respectively issued approximately 250 and 200 passports to their citizens residing in Nigeria, and Nigeria has issued the correlate 2-year renewable resident permits.

Although the Multipartite Agreement is only applicable in Nigeria, Sierra Leone has issued a total of over 5000 passports to former Sierra Leonean refugees established in several ECOWAS countries, namely Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, and Senegal, which have also applied the Protocols to facilitate the integration of this refugee population.

## **(2) Enhancing local capacities for refugee status determination and addressing secondary movements of asylum seekers and refugees**

All ECOWAS member states are party to the 1951 Convention<sup>5</sup> and its 1967 protocol<sup>6</sup> as well as the OAU Refugee Convention<sup>7</sup>. All countries<sup>8</sup> but two have national refugee laws, and all<sup>9</sup> but one have established mechanisms for the determination of refugee claims. However, as pointed out at the conference, shortcomings remain and in several countries the quality of the asylum procedure could be further improved.

<sup>5</sup> Convention Relating to the Status of Refugees, 1951

<sup>6</sup> Protocol Relating to the Status of Refugees, 1967

<sup>7</sup> OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

<sup>8</sup> Benin, Burkina Faso, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

<sup>9</sup> Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo

UNHCR will continue to assist governments in improving the **quality and efficiency of asylum procedures**, including by ensuring access to independent appeal procedures, and in establishing asylum systems where these are still lacking. Efforts will also continue towards the provision of **protection to refugees in line with international standards**, through the insurance of the respect for their fundamental human rights, including but not limited to the right to life, the right to work and the right to education, *inter alia* as a measure to limit hazardous secondary movement (See Chapter 4).

### **(3) Combating trafficking and implementing the Ouagadougou Plan of Action**

The majority of ECOWAS member states ratified the 2000 **United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person** (except for Côte d'Ivoire, Ghana, Sierra Leone and Togo). Many of them have adopted national legislation on counter-trafficking but there is a need for further harmonisation of these legislations with the provisions of the Protocol. In addition, efforts should continue to implement the **Ouagadougou Plan of Action on Trafficking in Human Beings Especially Women and Children**. The Ouagadougou Action Plan was adopted by the African Union, the European Union and their member states in 2006, to demonstrate their joint commitment to scale up efforts in the fight against human trafficking. It sets out a three-pronged strategy geared at preventing trafficking, protecting victims, and prosecuting those involved in the crime, including through criminalisation of trafficking in persons; protection of and assistance to victims; research and awareness raising; creation of specialised anti-trafficking units; data collection mechanisms; and cooperation among member states (See Chapters 7 and 8).

### **(4) Enhancing border management while ensuring protection**

States are encouraged to ensure that immigration-control measures contain **safeguards allowing access to the territory and an assessment of international protection needs** for those who claim to be in need of international protection to ensure that refugees are not being *refouled* to countries where their life or liberty would be at risk. Protection-sensitive entry systems also ensure that **international human rights guarantees** are included into national and regional migration management policies and practices. In this regard, it is important that law enforcement

authorities and especially immigration officials are properly trained about the ECOWAS free movement protocols and their interaction with the international refugee and human rights law.

### **(5) Addressing challenges to human rights protection**

Migrants and refugees, particularly when they travel irregularly, are often exposed to human rights violations and abuses. Mechanisms to differentiate between people with different profiles and needs, as well as coordination and referral mechanisms between the asylum system and other systems, such as the child-protection or the victim of trafficking systems, help ensure that the protection needs of various categories of persons are recognized and addressed. It also ensures that the **human rights of all individuals** involved in mixed movements are respected. The implementation of all human rights instruments states are parties to, including the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, should be reinforced. In this respect, it is important to properly incorporate the human rights instruments' provisions in national legislation and to strengthen mechanisms aimed at monitoring the implementation of these instruments (See *Chapter 6*).

### **(6) Options for migrants who are not citizens of ECOWAS countries**

Finding appropriate solutions for migrants and rejected asylum seekers from non-ECOWAS countries to whom the ECOWAS entitlements do not apply remains a challenge. Often, they have few possibilities to regularize their status, which contributes to their vulnerability. There is a need for more information on migratory movements to and within West Africa and for the promotion of regular migration options to the region.

### **(7) Return of non-refugees**

Unlike refugees who are assisted by UNHCR when they choose to return to their country of origin, the return of non-refugees (unsuccessful asylum seekers, migrants moving irregularly, etc.) remains a major challenge in West Africa. Measures to facilitate the return and reintegration of non-refugees thus need to be taken, in accordance with the following two principles: (i) return should be carried out with respect for the human rights and dignity of those concerned, and (ii) sustainability of return is best guaranteed if return takes place on a voluntary basis.

## **(8) Enhancing legal migration: alternatives to dangerous irregular migration?**

In recent years, irregular migration within and from West Africa has increased substantially and has become a major challenge for West African states. An increased use of the existing ECOWAS legal frameworks and increased legal labour migration opportunities to destination countries outside the region could assist in diminishing hazardous irregular migration.

In order to ensure that the **recommendations of the conference were pursued and implemented**, a “Regional Follow up Group for the Dakar Conference on Refugee Protection and International Migration in West Africa” was established in Dakar in 2009<sup>10</sup>. Effective partnerships, with governments, international organizations and NGOs, are key to ensuring that persons of concern to UNHCR are effectively protected and that protection-sensitive migration policies are developed. The Dakar Conference Follow Up group aims at operationalising this **cooperative approach** (See *Chapter 10*).

---

<sup>10</sup> The Follow-up Group meets once a month in Dakar. Core members of the Follow Group are IOM, UNHCR, OHCHR and ILO, while other organizations (ICRC, IFRC, UNICEF, UNIFEM, UNODC, etc.) attend meetings on an ad hoc basis.

## Chapter 6.

# A Human Rights-Based Approach to Migration and Mechanisms for the Protection of Persons on the Move



*Chapter contributed by the United Nations High Commissioner for  
Human Rights, West Africa Regional Office*

Every country in West Africa is affected by migration, whether as a country of origin, transit, destination or as a combination of these. For many individuals, migration is a positive and empowering experience, but for others it leads to exploitation, discrimination, or serious human rights violations.

### 6.1 Human rights concerns in a context of population movements

As strangers in a society, migrants and refugees are frequently unfamiliar with the national language, laws and practice, and may lack reliable social networks. Persons on the move are also **far removed from the legal protection of their countries of origin**, making them more vulnerable and less able than others to know and assert their rights. This is especially true in the case of persons moving irregularly whose lack of official status in society often implies their inability to report abuses. Recurring concerns may include a lack of effective measures to combat smuggling and trafficking of migrants; interception of migrants at sea; *refoulement* of asylum seekers or refugees without due process; the practice of mandatory detention of migrants moving irregularly; criminalisation of persons moving irregularly and of victims of trafficking; ill-treatment in the context of border control; abusive working conditions, including non-payment of wages; lack of access to health care or to education for migrants, especially children, in particular those who are undocumented.

The establishment of asylum and migration policies and systems that respect the human rights of migrants, refugees and other persons on the move and ensure their **effective protection** presents a challenge to all countries, including West African governments. While this objective constitutes an obligation for states, it is also the best manner to ensure that the contribution of persons on the move to the development of their countries of origin and host societies will not be undermined. **Discrimination** not only violates the human rights of those on the move, but also hinders their inclusion and integration into the host society, impairing their ability to become fully active members of their new communities. Therefore, the human rights of persons on the move must be protected during the **entire migratory process**, and their **integration** into host societies should be facilitated.

## 6.2 Basic human rights principles and the human rights-based approach to migration

Human rights are freedoms to which all people are entitled. They are **universal** and have their basis in human dignity. Thus they apply to all persons on the move, irrespective of their immigration status. Human rights are also **indivisible, interdependent and inter-related**. Civil, political, economic, social and cultural rights are complementary and the strengthening of all these rights is especially important. Those most relevant to persons on the move include the right to life, the right to liberty and security, the prohibition of slavery, the right to freedom of movement, the right to private life, the right to work, the right to education, the right of association and freedom for all lawful trade union activities, and the right to health. The violation of one right will impact the effective exercise of other rights. For instance, the right to life will be imperilled if the individual does not enjoy the right to adequate food or health.

Human rights place **obligations on states and state representatives**. States have an obligation to respect, protect and fulfil the basic human rights of all individuals within their territory, including all migrants, without regard to their immigration status. Migrants and refugees often face **discrimination** and are the targets of hate speech, harassment and violence. The Durban Declaration and Program of Action, adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, emphasised that human rights violations against persons on the move occur widely in the context of

discriminatory, xenophobic and racist practices. Migrants, refugees and others who are seen as outsiders are blamed for societal problems, including crime and economic difficulties. They are often prevented from access to basic services or only access services at a level that does not meet international standards.

### **FACTBOX – The principles of equality and non-discrimination**

The principles of equality and non-discrimination lie at the heart of international human rights law. They imply that all individuals, including persons on the move, are equal before the law and have **equal rights to protection under the law**. In accordance with Article 26 of the International Covenant on Civil and Political Rights, the law shall prohibit any discrimination and guarantee to all persons equal and effective **protection against discrimination** on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Human Rights Committee has interpreted this article as an autonomous right applying to all human rights including those which are not provided for in the Covenant.<sup>1</sup>

The principle of non-discrimination does not mean that no differences can be drawn between individuals, such as nationals, migrants, refugees and other persons on the move. But very few restrictions are allowed, such as granting some political rights to nationals only (the right to take part in the conduct of public affairs, directly or through freely chosen representatives, or the right to vote and be elected). Furthermore differentiation in law can also be based on difference in facts. Differentiation based on objective and reasonable criteria does not amount to prohibited discrimination. Specific groups whose members need particular protection because of their vulnerability should enjoy special rights (for instance, women and children).

Therefore, in order to better prevent violations of the rights of all persons on the move and to ensure better protection, the Office of the High Commissioner for Human Rights advocates for and recommends a **human rights-based approach** to migration and migration management. A human rights-based approach to migration means placing

<sup>1</sup> Manuel Wackenheim v. France, Communication No 854/1999,CCPR/C/75/D/854/1999

human rights standards at the centre of migration considerations and international migration policy and management, making use of existing human rights mechanisms to protect migrants and other persons on the move from the human rights violations they may suffer at the different stages of the migratory process. The **human rights impact of migration policies** and practices must be assessed and taken into account in the formulation and implementation of policies and measures to promote inclusion, protection, and acceptance of migrants and other persons on the move in society. This approach requires an analysis of the ways and means by which human rights are violated, the identification of the rights-holders and the corresponding duty-bearers, an assessment of and compensation mechanism for discriminatory practices, and a strategy that puts the international human rights of persons on the move and the corresponding obligations of the state at the centre of the national debate.



Celebration of International Migrants Day 2010, Dakar, Senegal © OHCHR

### 6.3 International and regional human rights instruments protecting migrants

All human beings, including persons on the move, are protected by regional and international human rights instruments and principles (*for the protection accorded to refugees, see Chapter 4, for the protection*

*accorded to victims of trafficking, see Chapters 7 and 8, for the protection accorded to children see Chapter 9).* All the core international **human rights instruments grant protection to migrants**. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families offers the most comprehensive framework on migrants' rights and applies to all stages of the migration process.

Regional human rights instruments, such as the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa are also applicable to the situation of migrants.

### **FACTBOX – The core international instruments and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**

**The core international instruments** are composed of the following conventions:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons from Enforced Disappearance



### **The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families :**

- Adopted in 1990 and entered into force on 1 July 2003.
- Ratified by 44 states, 17 in Africa among which 8 are in West Africa (Burkina Faso, Cape Verde, Ghana, Guinea, Mali, Niger, Nigeria and Senegal).
- Emphasises the link between migration and human rights.
- Ensures the protection not only of migrant workers but also of their family members.
- Guarantees fundamental rights to all migrant workers, both regular and irregular.
- Contains migrant-specific human rights provisions such as the prohibition on destruction of identity and travel documents (Art. 21) and the prohibition of collective expulsion (Art. 22).
- Provides guarantees of certain employment rights, for instance the right to join trade unions (Art. 26) and the right to equal work and employment conditions (Art. 25).
- Confers on documented migrant workers and their family members more favourable rights.
- Promotes sound, equitable, humane, and lawful conditions in connection with the international migration of workers and members of their families.

## **6.4 Defending human rights**

Violations of the rights of persons on the move which result from **state failure to provide effective protection** should be **denounced** by human rights organisations and submitted to human rights mechanisms. This process should take place at the national, regional and international levels.

**At the national level**, numerous actors should be involved in the protection of the rights of persons on the move, including ministries

and government services, national human rights institutions, courts, parliaments, the police, NGOs, the media, unions, universities, and religious groups.

**At the regional level**, states should work together with regional organisations in order to promote the human rights of persons on the move, guide the effective implementation of the rights, and prevent violations. In West Africa, the Court of Justice of the West African Economic and Monetary Union is mandated to interpret regional instruments referring to human rights or to provide rulings on individual cases.<sup>2</sup>

**At the international level**, the United Nations has established different mechanisms for the protection of human rights, including the rights of persons on the move.

- **Mechanisms based on treaty bodies**

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. State parties are requested to submit reports regularly to the treaty body on the implementation of the treaty concerned. More specifically, the Committee on Migrant Workers monitors states' implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).<sup>3</sup> Five Committees<sup>4</sup> are also competent to consider individual complaints.

- **Mechanisms based on the United Nations Charter**

The **Special Procedures** is the name given to the various mechanisms established by the former United Nations Commission on Human Rights and continued by the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries (country mandates), or on a specific human rights situation worldwide (thematic mandates). Several mandates are specifically relevant to the situation of persons on the move, including

---

<sup>2</sup> Revised Treaty of ECOWAS (Art. 6-7, 15,76)

<sup>3</sup> The Committee will also, under certain circumstances, be able to consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated once 10 states parties have accepted this procedure in accordance with article 77 of the Convention. At the moment, two states have accepted this procedure.

<sup>4</sup> Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee against Torture, Committee on the Elimination of Discrimination against Women, Committee on the Rights of Persons with Disabilities.

the Special Rapporteur on the human rights of migrants, the Special Rapporteur on trafficking in persons, especially in women and children, and the Special Rapporteur on the sale of children, child prostitution and child pornography. Alleged human rights abuses against groups as well as individuals (“communications”) can be submitted to all the mandates holders.

The **Universal Periodic Review (UPR)** was established in 2007 as an avenue through which the Human Rights Council periodically reviews the fulfilment of human rights obligations and commitments of each of the United Nations’ 192 member states. It is a cooperative peer-review mechanism, based on an interactive dialogue with the state under review, giving it the opportunity to highlight the actions it has taken to improve its human rights compliance. Migration issues have been raised in almost every UPR session, and recommendations often include elements on the human rights of persons on the move.

All of these human rights mechanisms are intended to complement each other. The implementation of recommendations of the international human rights mechanisms should help to address the human rights issues of all persons on the move in West Africa.

## Chapter 7.

# Trafficking in Persons

Trafficking in persons is the exploitation of another person or their work through deception and coercion, often in surroundings unfamiliar to the person exploited. Traffickers rely on a wide variety of methods, often taking advantage of people in a vulnerable position, such as migrants moving in an irregular manner. Trafficking of children from rural areas to urban areas is a particular concern in West Africa, but other types of trafficking also take place and all ECOWAS states seem to be both origin and destination countries for trafficking in persons.

### 7.1 Defining trafficking in persons

➤ The international legal **definition of trafficking** describes it as “*the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*”.

➤ In the case of **children**, the Palermo Protocol sets out that there is no need for any element of coercion for the crime of trafficking to take place: “*The recruitment, transport, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking even if this does not involve [...] the use of any means of control and coercion*”.

### FACTBOX – The Palermo Protocol

**The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, Supplementing the UN Convention Against Transnational Organized Crime (UNTOC), gives the only definition of trafficking in persons that is accepted internationally. The definition provided in this chapter is given in Art 3(a) of this Treaty, which is also referred to as the “**Palermo Protocol**”. This Protocol is an important tool in the fight against trafficking and has been signed by



142 countries in the world. It is often used as a basis for drafting national legislation on trafficking in persons. In 2005 and 2006, the ECOWAS Commission carried out a program aimed at increasing compliance with the Palermo Protocol and UNTOC standards on trafficking in persons, including by supporting member states in establishing appropriate legal regimes.

**Trafficking in persons takes many forms.** Counter-trafficking initiatives need therefore to be inclusive and ensure that all types of victims are identified and can benefit from the special protection and assistance measures victims of trafficking should have access to. National legislations often include not only cross-border but also domestic, in-country trafficking, in their definition of trafficking. This is particularly important in West Africa as there is **considerable internal trafficking**, mostly from rural areas to the cities. Children are trafficked especially for domestic and agricultural work and forced street begging. However, other types of child trafficking occur in West Africa, as well as trafficking of adults. Women and men can, for example, be trafficked for forced labour or sexual exploitation.

### FACTBOX – Identifying victims of trafficking

Across the world, identifying victims of trafficking is **one of the most problematic issues** in counter-trafficking. Actors involved in counter-trafficking might have different views on who should be considered as a victim, especially when cultural norms and traditions, and a rights based approach collide. Furthermore, trafficking victims might not want to be identified. Unlike refugees or asylum seekers, victims of trafficking rarely actively seek help. Even when they are offered help, they may be reluctant to discuss their experiences or to consider themselves a victim. Especially in cases involving sexual exploitation, **shame** is a considerable obstacle to speaking out. A failed migration experience, not fulfilling the expectations of one's family, can also lead the victim to being ashamed and to hiding their exploitation. The victim might also remain **silent** in the **fear** of traffickers, which might be wise if adequate protection mechanisms are not in place. If the victim has experience of corrupt authorities and law enforcement, this might also make them unable to accept assistance or talk about their ordeal. The victim might



have been forced into illegal activities or be concerned about their irregular migration status. The victim might also have begun to feel loyalty towards the traffickers, as a survival mechanism, and might potentially suffer from memory loss and be unable to recount their story, due to post traumatic stress syndrome, or a forced drug habit.

## 7.2 The three phases of trafficking

Even though trafficking can take different forms, the crime in essence has three phases: **recruitment, transportation and exploitation.**

### 1. Recruitment

Recruitment for trafficking can be **partially deceptive**, fully **deceptive** or **forced**. In a partially deceptive recruitment victims may be informed of the nature of the work but not of the conditions. While some victims are fully deceived as to what they are signing up for, others can be taken by force by the recruiters or by the traffickers directly. The recruiter is often someone known to the victim, in which case the offer of a job or an education opportunity may seem perfectly normal. Recruiters are usually good at manipulating people's dreams of a better life and at using customs and traditions to hide their intent (such as '*confiage*' or fostering, in the case of children in West Africa). It can be difficult to determine whether or not the recruitment happened through deception, for instance in conflict situations when a victim has little or no other alternatives. Once the victim has been recruited, they are usually transported to another location.

### 2. Transportation

Victims are transported from countries and regions of **origin**, with or without **transit**, to **destination** countries and regions. The travel can be domestic or international; it can be done irregularly with the help of people smugglers, or by using legal travel documents and routes. Transportation can be done by air, sea or land. In short, it can be any type of relocation, from a short bus trip to a months-long journey across countries. Usually, however, travel arrangements are made by the traffickers the recruiters, or someone they hand the victim over to. The

victim is often accompanied and is kept from making contact with other people, and sometimes given misleading information. As a result, victims of trafficking are often unable to find their way back and might not even know which country they are in. Once at destination, exploitation awaits the victim. It should be noted, however, that some victims of trafficking might already be exploited while making the journey, and that some people may become victims of trafficking along the migration route, after embarking on the journey of their own accord.

👉 **Trafficking** is a violation of human rights and implies coercion for the purpose of exploitation while **smuggling** is an organized illegal border crossing.

### 3. Exploitation

The **purpose** behind recruiting and transporting someone is **personal profit** through **exploitation**. The traffickers can either receive direct financial gain or profit through the free, or almost free, services and labour provided by the victim. The exploitation can happen in a variety of ways, in any kind of situations. The local context determines who is at risk of trafficking and how they can be exploited. Common forms of exploitation include:

- Sexual exploitation: commercial sexual exploitation in the sex industry (like forced prostitution in the streets, bars, brothels, tourist or porn industries, and so on) and other types of sexual exploitation (for example in private homes or in camps of armed forces/groups)
- Forced labour (in agriculture, fishing, construction, mines, street vending, and so on)
- Slavery or practices similar to slavery
- Servitude (such as domestic servitude)
- Forced begging
- Forced marriage
- Forced armed/military service
- Removal of organs

### FACTBOX – Smuggling of migrants

Trafficking in persons is often confused with smuggling of migrants. According to the Palermo Protocol smuggling of migrants means “*the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident*”. Smuggling is, in other words, the illegal crossing of national borders and entry to a country, often organized by intermediaries and criminal networks making a financial profit. However, **smuggling does not imply exploitation**. Smuggled migrants often become vulnerable and dependent on the smugglers, and face dangers and abuse, but in essence it is only about arranging the travel through mutual consent. In smuggling cases, the criminal activity is aimed at the state which is entered illegally, while in trafficking in persons it is always a human being who is the victim, whose rights have been abused. The vulnerable position of smuggled migrants, however, places them at risk of becoming victims of trafficking.

### FACTBOX – Myths about trafficking in persons

It is commonly believed that trafficking is a problem that only poor countries or poor people face, and that only women and children can be victims. There is also a lot of confusion around the link between trafficking and prostitution. It is important to know that **trafficking exists in all types of societies and situations**, and that while poverty is a factor which increases an individual’s vulnerability to trafficking, anyone can fall victim to the deceiving promises of traffickers. Men and boys can also be victims of trafficking. Not all of those working in the sex industry are victims, but among sex workers there are victims of trafficking, including some who may have entered prostitution without being coerced, but ended up trafficked and exploited by criminals.

### 7.3 Mechanisms of control and coercion

Trafficking victims are under the control of someone. They are not always free to make decisions about their life, and feel trapped. Sometimes the traffickers use outright violence to control the victim, but most often their methods are more subtle. Violence as a means of control is not sustainable: it is visible, may gather attention, and can make the victim unable to produce profit (due physical injuries or psychological problems). Traffickers therefore prefer to maintain a semblance of normality to avoid anyone taking an interest in the situation of the victim. For example, **debt bondage** combined with **threats of violence**, might be used to control the victim and keep them in an exploitative situation. Other control mechanisms can include:

- Isolation
- Threats to families of victims
- Violence and fear of violence
- Physical control
- Threats/control based on religion/beliefs
- Deprivation of documentation (ID card, national passport and so on)

#### **FACTBOX – Trafficking: a lucrative crime**

Trafficking in persons is one of the most lucrative crimes in the world (it can be compared to the illegal arms and drugs trade). There are limited risks involved due to gaps in legislation, corruption, lack of specialized law enforcement, and lack of general awareness and capacity to address the issue. Furthermore, trafficking victims can be sold and exploited several times, and trafficking is often linked with other criminal activity. The extent of trafficking in persons is impossible to know as many victims are not identified due to fear of stigmatization, low level of self identification, limited knowledge of trafficking issues, and the inability or unwillingness of some victims to report their trafficking experiences to the authorities.

## 7.4 Countering-trafficking: prevention, protection and prosecution in partnership

IOM has been providing counter-trafficking services for several decades. Throughout the world, IOM has implemented almost 500 counter-trafficking projects in 85 countries and has provided assistance to approximately 20 000 victims of trafficking. In West Africa, IOM has implemented several projects to combat trafficking at the regional and at the national levels. From 2006 to 2010, IOM implemented the **Regional Program of Assistance for the Return and Reintegration of Children Victims of trafficking in West Africa**, which supported the return of close to 600 children. IOM has also participated in the funding of the activities of the Child Mobility Platform (see *Chapter 9*) which aims at better understanding the complexities of child mobility in the region. IOM considers the “**3 Ps**” approach as a best practice model for combating trafficking. A comprehensive strategy includes efforts to **Prevent the crime**, to **Protect the victims** and to **Prosecute the traffickers**.



*A boy who benefited from the IOM Regional Return and Reintegration Program is reunited with his family © IOM*

## Prevention

**Prevention** activities can be targeted through the identification of vulnerabilities, and the collection and analysis of data to construct profiles of victims of trafficking. Awareness raising and sensitisation campaigns must be carried out in communities. Options to migrate safely must be provided, for example through bilateral agreements and circular migration schemes, and information on employment and migration issues must be made available to prevent risky migration. IOM is working with Ministries of Labour in a number of countries to ensure labour migrants know their rights and access employment opportunities in a safe manner.

## Protection

The provision of necessary **protection** and assistance can only be achieved if all stakeholders work in close collaboration. In addition to law enforcement agencies, such as the police and border guards, service providers working with groups with specific needs, such as street children, irregular migrants, sex workers and refugees, are well placed to **identify victims of trafficking**. In West Africa, IOM is working with NGOs running shelters for street children to identify victims of trafficking among these children. To determine who is a victim of trafficking, IOM has developed a screening interview form, which is used by IOM staff and partner organizations to gain an understanding of the person's situation and to see if they are in fact trafficked. IOM is also developing its cooperation with UNHCR for the joint identification and **protection of victims of trafficking in need of international protection**<sup>1</sup> (see *Chapter 8*).

After a victim has been identified as being trafficked, they should be referred to a competent service provider for **protection and direct assistance**:

- Provision of safe accommodation
- Provision of basic necessities, food and hygiene products
- Psycho-social support and medical assistance

---

<sup>1</sup> *Developing Standard Operating Procedures to facilitate the Protection of Trafficked Persons*, IOM-UNHCR Framework Document, December 2009

Throughout the direct assistance process a human rights based approach should be adopted, and **gender, culture and age sensitivity** should be ensured. IOM has developed a Direct Assistance Handbook, which provides information on how to arrange and deliver protection measures in accordance with best practice. Direct assistance measures must always be needs-based and tailored to each person, and in the case of under 18-year-old victims the **best interest of the child** must be the guiding principle (see *Chapter 9*). The assistance process should be coordinated by specialised professionals, and IOM has developed specific tools for training staff on all aspects, from using screening interview forms to setting up and running a shelter for victims of trafficking.

The basic process of direct assistance involves taking care of the immediate needs of the person and after these have been provided for, there should be a suitable **period of recovery and reflection**, to see what the possibilities are for the future. There are two main long-term solutions:

1. **Integration** into the society of destination (in which case there will be a need for residence rights, cultural and linguistic support, vocational training, and so on)
2. **Return** to country/region of origin and reintegration into the society of origin (in which case there will be a need for risk assessment to ensure safe return, livelihood support, battling stigmatization, support to family/community, vocational training, and so on)

If neither option is viable, **protective relocation to a third country** should be considered. IOM, UNHCR and partners work to promote the protective relocation of victims of trafficking in cases in which there is a high risk to their safety and security in the region/country of origin, and there are no safe settlement options in the host region/country. The process of decision as to what is the most appropriate solution usually includes family tracing and a risk assessment to see whether a return home would be safe and viable. To achieve this, the **case management** approach should be used, where one instance/person is in charge of the process, coordinating different actions and aspects of the process, with the participation of the beneficiary.

## Prosecution

Agencies like IOM and the United Nations Office for Drugs and Crime (UNODC) work with governments, and especially with law enforcement agencies, to build their capacity in applying laws against trafficking and in using penal code and other existing legislation to criminalise all trafficking and related crimes (typically pimping, money laundering, and so on). A best practise model to combating trafficking by **prosecution of traffickers** is the victim centred approach, where investigation and prosecution processes are specifically designed to **avoid criminalisation of victims**, for instance for illegal activities they were forced to carry out or for their irregular migration status.

The victim centred approach also places emphasis on the ability and responsibility of law enforcement agencies and the judiciary to **protect the victims**. On one hand victims of trafficking might need special protective measures due to their status as witnesses for serious crimes, and on the other hand the prosecution efforts must specifically be designed to avoid further traumatisation of the victims. This can be achieved by law enforcement agencies and the judiciary building their capacity in investigation techniques specific to trafficking, by enhancing collaboration mechanisms with social services providers and specialised legal counsellors, and by adhering to the do no harm principle, where the victim's wellbeing and rights are the common goal. Respecting the victim/witnesses' rights and creating practical **collaboration mechanisms between protection and prosecution actors** will allow for in-depth investigations that are more likely to lead to prosecutions and eventually sentences for traffickers. In addition, a comprehensive approach aimed at combating the crime of trafficking also includes actions to assist governments in drafting anti-trafficking legislation and/or plans of action, starting often with an assessment of the existing legal framework.

### FACTBOX – Regional counter-trafficking framework

- **The ECOWAS Trafficking in Persons Coordination Unit (TIP Unit)** was created by decision of the Authority of Heads of State of ECOWAS in 2001 and since 2006 it has been a unit within the



Department of Humanitarian and Social Affairs. Its mission is to fight trafficking in persons and improve the protection of the rights of children, through the creation of institutions and procedures and the strengthening of the capacities of member states. In 2009, the ECOWAS Commission adopted a policy on Protection and Assistance to Victims of Human trafficking which it is now seeking to implement, including through the drafting of national action plans by member states, and the establishment of anti-trafficking task-forces and national TIP focal points.

The work of the TIP Unit is a reflection of the ECOWAS Commission's vital role in capacity building, advocacy, coordination, and network building in the field of counter-trafficking. The Commission also organises an Annual Review of Implementation, which measures progress made, identifies challenges, and creates a catalysing environment for member states to elaborate common counter-trafficking strategies. In 2009, the ECOWAS Commission and IOM produced a joint manual on Cooperation and Networking, which is available in English, French and Portuguese.

- **The joint ECCAS/ECOWAS Plan of Action against Trafficking in Persons, especially Women and Children in West Africa** is valid until the end of 2011 and sets out seven main points of action:
  1. Legal framework and policy development
  2. Protection and assistance for victims of trafficking
  3. Prevention and sensitisation
  4. Collection, exchange and analysis of information
  5. Specialisation and training
  6. Travel documents and ID
- **The Ouagadougou Plan of Action on Trafficking in Human Beings Especially Women and Children** was adopted by the African Union, the European Union and their member states in 2006 to demonstrate their joint commitment to scale up efforts in the fight against human trafficking. It sets out a three-pronged



strategy geared at preventing trafficking, protecting victims, and prosecuting those involved in the crime, including through criminalisation of trafficking in persons; protection of and assistance to victims; research and awareness raising; creation of specialised anti-trafficking units; data collection mechanisms; and cooperation among member states.

- **The African Union Commission Initiative against Trafficking (AU.COMMIT)** seeks to consolidate initiatives to combat trafficking in Africa and in particular to raise awareness on the Ouagadougou Action Plan and promote its implementation. The AU.COMMIT Campaign (2009-2012) also requests the African Union Commission in consultation with IOM and other relevant partners, to assist member states and regional bodies in developing a follow-up mechanism. The Campaign was launched in the ECOWAS region in March 2010 with the objective of setting the fight against trafficking at the top of the agendas of member states, regional economic communities (RECs) and civil society organizations (CSOs). The launch event closed with a series of concrete recommendations aimed at strengthening data collection and reporting mechanisms, improving the protection of victims and the prosecution of offenders, as well as increasing cooperation between the African Union, RECs and member states on the implementation of the Ouagadougou Plan of Action.

## Chapter 8.

# Trafficking in Persons and Refugee Protection

Not all victims or potential victims of trafficking fall within the scope of the refugee definition. However, some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention and/or the 1969 OAU Refugee Convention and may therefore be entitled to international refugee protection. This chapter presents and underlines the importance of a human rights-based approach to counter-trafficking in order to address the international protection needs of victims of trafficking or individuals who have been or are at risk of being trafficked.

### 8.1 Trafficking in persons and the international protection regime

Neither the issue of trafficking in persons nor victims of trafficking as such fall under the scope of application of the refugee Conventions. However, refugee protection actors can become directly involved as part of a broader international response to trafficking in persons. UNHCR, as the UN agency mandated to provide international protection to refugees and to seek permanent solutions to their problems, becomes involved where **human trafficking affects persons of concern to UNHCR** (asylum seekers, returnees, stateless persons and, under specific circumstances, internally displaced persons). UNHCR's involvement with the issue of trafficking is essentially threefold:

- **To prevent refugees**, asylum-seekers, returnees, stateless and internally displaced persons **from becoming victims of trafficking**, and to address the specific protection needs of persons of concern who have fallen victims to trafficking;
- To ensure that the **international protection needs of victims of trafficking** (or individuals at risk of being trafficked) which arose as a result of their trafficking experience are recognized, and that victims of trafficking have **access to fair and efficient asylum procedures**, so their claims can be determined and an appropriate durable solution identified.
- To assist states in ensuring that victims of trafficking who are without identity documents are able to establish their identity and nationality status in order **to prevent them from being rendered stateless**, and to protect stateless victims of trafficking.

UNHCR’s interventions and activities in the area of trafficking in persons will therefore be limited to protecting persons of concern to UNHCR in the above mentioned scenarios, as well as victims of trafficking who **fear persecution** or other serious human rights violations and cannot return home for reasons related to the 1951 refugee Convention and/or the 1969 OAU Refugee Convention.

### **FACTBOX – Bridging the counter-trafficking regime and International Refugee Law**

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children contains **a saving clause concerning asylum-seekers and refugees**. Article 14 of the Protocol states that *“nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”*

## **8.2 Preventing asylum seekers, refugees, returnees and IDPs from becoming victims of trafficking**

Different factors such as destroyed family unity and support structures, the loss of socio-economic support systems, precarious legal status and the lack of enjoyment of basic rights essential to the attainment of self-reliance – in particular for women – make displaced persons especially vulnerable to trafficking. These factors may prompt people to leave precarious situations in their country of asylum or residence, and exacerbate their vulnerability when on the move.

### **Key prevention measures:**

- Ensure **access to asylum procedures** and conduct refugee status determination within a **reasonable timeframe** and according to a **fair procedure**;

- Ensure **access to a durable solution**, especially local integration within the country of asylum (including: **registration** and delivery of identity **documents** and **birth certificates**; access to the job market and the **right to work**; access to **education**; access to **naturalization**);
- Organise **information campaigns** on trafficking and the different forms it may take as well as on the existing risks in a specific place to inform and educate asylum seekers, refugees, stateless and internally displaced persons;
- Ensure that the right to seek and enjoy asylum is explicitly mentioned in the **national legislations and national action plans** against trafficking in human beings;
- Integrate training modules on **international refugee protection, IDP protection and human trafficking** into training curricula of relevant actors, such as for instance, law enforcement agents, asylum authorities, border officials, judiciary, and social actors.

### 8.3 Determining whether a victim of trafficking can be recognized as a refugee

While being a victim of trafficking in persons normally does not suffice to establish a valid claim for refugee status, this does not exclude that, **under specific circumstances, trafficked persons may be in need of international refugee protection**. A claim for international protection could arise, for instance, in the following scenarios:

- The victim has been trafficked abroad, escaped their traffickers and seeks international protection in the state in which they currently find themselves;
- The victim has been trafficked within the borders of their own country, escaped from their traffickers and has fled abroad in search of international protection;
- The individual has not (yet) been trafficked but fears becoming a victim of trafficking and has fled abroad in search of international protection because they cannot find state protection.



*Individual interview to assess international protection needs © UNHCR*

To be recognized as a refugee, the individual must **satisfy all elements of the 1951 refugee definition**, which key elements are the following:

- To have a well-founded fear of persecution;
- For reasons of race, religion, nationality, membership of a particular social group or political opinion;
- To be outside one's country of origin;
- To be unable or unwilling, for fear of persecution, to seek that country's protection or to return to the country of origin.

Victims of trafficking, or individuals fearing to become victims of trafficking, may face different **forms of harm** upon return which may rise **to the level of persecution**, such as re-trafficking, reprisals, harassment, detention, slavery, torture or other inhuman or degrading treatment, threats or intimidation by traffickers and/or persons linked to the trafficking network –in particular if a victim has cooperated with law enforcement authorities, intimidation and discrimination by authorities in the country of origin, ostracism, discrimination, punishment or exclusion by the family or the community.

Financial gain tends to be a primary motivation for trafficking. However, the targeting and **selection of victims** may be influenced by, or solely based on, the following factors: **race, religion, nationality, political opinion, membership of a particular social group**<sup>1</sup>. If an individual's well-founded fear of persecution is related to one or more of these five grounds, and if the individual satisfies all the other elements of the 1951 refugee definition, they will qualify for refugee status.

The mere existence of a law prohibiting trafficking in persons will not of itself be sufficient to determine that the individual is in a position to seek their country's protection. While **persecutory acts most often emanate from non-state actors** (like individual criminals, trafficking rings, or, in some situations, family or community members), there may be situations where trafficking activities are de facto tolerated or condoned by the authorities or even actively facilitated by corrupt state officials. Therefore, even if adequate legislation exists, if it is not effectively implemented, or if the individual concerned is unable to gain access to protection and assistance, **the state may be deemed unable to extend protection to the victim**, or potential victim, of trafficking.

👉 The granting of asylum shall not be conditional upon the willingness of a victim to give evidence in legal proceedings against the traffickers. Refugee status determination shall be conducted solely on the merits of the case for seeking international refugee protection.

## 8.4 Protecting victims of trafficking who are also refugees

UNHCR has developed **Guidelines** to assist the states in determining whether a victim of trafficking meets the necessary criteria to be recognized as a refugee. One of the key activities to ensure the protection of victims of trafficking who have international protection needs would thus be to provide support to national asylum authorities on **refugee status determination**, including through training on the Guidelines on *"The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked"*.

<sup>1</sup> Examples of particular social groups which may be specifically targeted by traffickers are single women, widows, separated or unaccompanied children, orphans, street children, and former victims of trafficking.

**Other key protection measures include:**

- Advocate for the promotion of **asylum-sensitive anti-trafficking legislation** and practice at the national level;
- Monitor the arrival of refugees within mixed migratory flows, and ensure **identification of victims of trafficking** or individuals at risk of being trafficked;
- Ensure that **national asylum systems are accessible to persons seeking international refugee protection** and are open to receiving claims from individual victims of trafficking;
- Establish **referral mechanisms** between key actors (national authorities, IOM, UNHCR, NGOs, etc) to ensure the **protection and assistance** of trafficking victims, taking into account the specific needs of the victim (such as trauma).
- In situations when refugee victims of trafficking continue to be under threat in their country of asylum, find a **long-term solution**, such as **resettlement to a third country** (See *Chapter 4*), which will guarantee that victims and their families obtain **effective protection**.

As we have seen, persons who have been or are at risk of being trafficked may have a well founded fear of persecution or be at risk of serious harm. **Cooperation** between all actors involved in anti-trafficking activities and those responsible for granting international protection is thus essential to provide the best possible forms of protection (see *Chapter 10*).

## Chapter 9.

### Children on the Move

Children, like adults, choose to migrate for many reasons: to find work, to improve their personal situations, or to explore the world. These children who take the decision to migrate may travel alongside other children who are in a situation of forced displacement, like refugee children or child victims of trafficking. Whether their movement is forced or voluntary, children are particularly vulnerable and states are responsible to ensure their rights are upheld, regardless of their status. As emphasised in the Declaration of the Rights of the Child, *“the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection”*.

#### 9.1 Defining children on the move

➤ Article 1 of the Convention on the Rights of the Child indicates that a **“child means every human being below the age of eighteen years”**, which definition is generally accepted in international law.

➤ The term **unaccompanied minor** refers to a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.

➤ The term **separated child** refers to a child who is separated from both parents or from his or her previous legal or customary primary caregiver but not necessarily from other relatives.

Children on the move are **not a uniform group**, and their circumstances in places of origin, transit and destination vary greatly. Their movement may be voluntary or forced, internal or across borders, with or without family members or peers. While some flee in search of safety, many more leave for social, economic or religious reasons. Exploitation and abuse affecting children on the move can take many forms, girls being particularly at risk of **gender-based violence**. It should be noted

however that boys on the move are also vulnerable to sexual violence. Some of the most **common forms of exploitation** affecting children include economic and sexual exploitation, and recruitment into armed groups or forces. **Types of violence and abuse** frequently facing children on the move include physical violence, deprivation of food and/or shelter, hazardous work conditions, discrimination, social isolation, and lack of access to education and/or to health care.

It must be noted however that when children manage to migrate safely, their movement can be empowering and result in **positive changes** in their circumstances. Mobility can, for instance, allow them to gain access to education, increase their family's income, or find protection from violence at home.

## 9.2 Protection tools

The 1989 **Convention of the Right of the Child** (CRC) recognizes that children need special care and protection, and sets out the rights that must be realized for children to develop their full potential, free from hunger and want, neglect and abuse. The CRC applies to all children, regardless of their nationality or other status. The near-universal ratification of the Convention reflects a global commitment to the principles of children's rights. By ratifying the CRC, all governments in West Africa have committed to complying **with the obligations of the Convention towards every child within their jurisdiction**. These obligations include, amongst others, guaranteeing that children enjoy the right to life, including survival and development; the right to be free from discrimination, exploitation and abuse; the right to a nationality; and the right to the highest attainable standard of health and education.

The rights of children on the move are not addressed specifically in the CRC. Nevertheless, Article 22 of the CRC accords **special rights to refugee children**, and there are several provisions which are particularly relevant to all children on the move, including Article 10 on **family reunification**, Article 36 on **protection from all forms of exploitation**, and Article 37 on **protection from torture** or other cruel, inhuman or degrading treatment or punishment, and from unlawful and arbitrary deprivation of liberty.

The following **international and regional instruments** can also be instrumental in protecting children on the move:

- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights
- the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- the CRC Optional Protocol on the Involvement of Children in Armed Conflict
- the ILO Conventions on child labour
- the UN Protocol on Trafficking in Persons
- the African Charter on the Rights and Welfare of the Child

### **FACTBOX – Core principles set by the Convention on the Rights of the Child**

- The best interests of the child shall be a primary consideration in all actions affecting children (Article 3).
- There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (Article 2).
- Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6).
- Children shall be assured the right to express their views freely and their views should be given “due weight” in accordance with the child’s age and level of maturity (Article 12).

 States have the primary responsibility to protect all children on their territory. As a specialised UN agency, UNICEF is mandated to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential.

## FACTBOX – The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child, which was adopted by the African Union in July 1990, **complements the CRC** by covering some aspects that are specific to Africa. Further to comprehensively recalling rights guaranteed in the CRC, it emphasises the need to include African cultural values and experiences when dealing with the rights of the child. It is important to recall that the Charter:

- Overrides any custom, tradition, cultural or religious practice that contradicts the rights, duties and obligations set in the Charter;
- Reaffirms that a child is any person who is under 18 years old;
- Prohibits recruitment of children in armed conflict, and addresses the conscription of children into armed forces;
- Prohibits harmful traditional practices, such as marriages involving children and female genital mutilation;
- Prohibits kidnapping, sale and trafficking of children, and the use of children as beggars;
- Protects children from economic exploitation and from performing any work that is harmful to the child's health and development or interferes with the child's education;
- Promotes girls' education, including after pregnancy;
- Protects internally displaced and refugee children;
- Makes reference to care of the child by extended family;
- Encourages states to provide support for parents "in times of need";
- Provides a way for children themselves to petition the Children's Charter's Committee of Experts regarding infringements of their rights; and
- Outlines the child's duties towards his or her parents, family and community.

### 9.3 Protection through prevention and response

Although mobility may bring positive changes to a child's life, movements away from home always **increase a child's vulnerability**, particularly for children moving alone and/or through irregular channels. The effective protection of children on the move will depend on a balanced **human-rights based approach**, which takes into consideration not only the vulnerability of the child due to his or her particular situation and his or her protection needs, but also the independence and resourcefulness of the child and his or her migration plans and objectives. The protection of children on the move cannot be achieved by preventing movement or imposing automatic repatriation, but by **reducing vulnerability and protecting the rights of the child**.

**Prevention measures** should include providing children and their families with **information** about migrants' rights, about the risks of irregular migration and the risk of trafficking (see *Chapter 7*). In high emigration areas, this information can effectively be provided at school. **Capacity building of border guards** and immigration officials is important to ensure that border crossing does not constitute a threat for children travelling alone and that children who are being trafficked or are in the hands of smugglers can be identified at border crossings. Children on the move, who do not have access to identity or travel documents, are often considered and treated as migrants moving irregularly or as juvenile delinquents, which seriously **hinders the realisation of their rights**. These children may become subject to criminal prosecution, detention or unsafe repatriation.



*Psycho-social support in the form of an art workshop taking place at a shelter for child victims of trafficking © IOM*

Children on the move, regardless of their situation or status, should always be considered and treated first and foremost as children, and should be treated with **dignity** at all times. **Individual rather than group measures** should be taken, as each child is unique and his/her situation is influenced by context, motivation, background, personal circumstances and the type of movement he or she is engaged in. Considering that by definition the family of a child moving alone is not in a position to provide the full scale of protection the child requires, **the best interests of the child must be a primary consideration** in all actions taken by the state, or other child protection actors, to assist or protect this child. To ensure that the child's interests are given due weight, a **Best Interest Determination (BID)** should be conducted for all particularly important decisions affecting the child. A BID is a formal process with strict procedural safeguards designed to determine the child's best interests. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise (social worker, psychologist, lawyer, etc.), and balance all relevant factors in order to determine what option is the most favourable to the child's security and well-being.

### FACTBOX – Best Interest Determination

The term '**best interests**' broadly describes the **well being of a child**. As each case is unique, a general definition of what is in the best interests of the child cannot be given. Therefore, the '**best interests**' of the child needs to be examined on an individual basis, taking into account the specific features of each case. In order to ensure the optimal implementation of the best interests principle in actions affecting individual children, a process called best interests determination (BID) should be conducted.

Key elements of a best interest determination process:

- Starts at identification and lasts until a durable solution has been identified
- Determines priorities and chronology of protection measures
- Consists in a comprehensive and individualized assessment



- Respects age and gender considerations
- Takes into account the views of the child
- Involves an interdisciplinary panel
- Looks at longer-term and durable solutions

The effective protection of children on the move can only be achieved through the **cooperation** of all key actors concerned (see Chapter 10). Establishing **child protection networks**, involving for instance social services, local authorities, the police, community representatives, NGOs and international organisations, will facilitate the identification of vulnerable children on the move, and their referral to adequate assistance and protection instances. Comprehensive strategies to protect children on the move should involve actors all along ‘child migration routes’ and should include the following core activities:

1. **Surveillance and collaboration**; to be carried out in the place of origin (village, refugee camp, etc.) by the community, in connection with local authorities and child protection actors.
2. **Warning system**; situations of trafficking or other types of abuse should be systematically reported for action to be taken as quickly as possible by the appropriate actors.
3. **Interception and prosecution**; if it is necessary to guarantee his or her security, a child may be intercepted on route; it is the responsibility of states to stop and prosecute traffickers and other persons who have violated the rights of children.
4. **Identification, registration and documentation**; the child should be properly identified and registered, and if necessary provided with documentation.
5. **Best interest determination**; a process to determine how to best address the child’s immediate and long term needs should start as soon as possible after the child’s identification. The child’s best interests should guide all decisions until a durable solution has been found.
6. **Temporary care**; a guardian should be appointed as soon as the child is identified, and the child should receive adequate care,

including shelter, food, medical care and access to education; monitoring of the temporary care arrangements and regularisation of custody issues are necessary.

7. **Family tracing and reunification;** family tracing should be conducted at the earliest stage possible; possibilities for reunification should be determined following a risk assessment (especially in the case of refugee and trafficked children) and taking into account the opinion of the child and his or her best interests.
8. **Reintegration support;** each child should benefit from a reintegration project, individually tailored to his or her needs, wishes and circumstances; the child's best interests should determine whether this reintegration takes place in the community of origin or elsewhere.
9. **Monitoring and follow up;** to ensure sustainability, the situation of the child and advancement of his or her reintegration project, should be monitored closely in collaboration with the child's family, teachers and community.

### FACTBOX – Refugee children

All procedures, activities and decisions involving or affecting child asylum seekers and refugees, whether they are accompanied, unaccompanied or separated, need to be carried out in a **child-sensitive manner**, consistently with the principles established by the Convention on the Rights of the Child, as detailed above.

During refugee status determination (*see Chapter 4*), the specific circumstances facing child asylum-seekers, as well as their unique experiences of persecution, due to factors such as their age, their level of maturity and development and their dependency on adults, need to be taken into account. It also needs to be recognized that **children may have refugee claims in their own right**.

Under-age recruitment, trafficking of children, sexual exploitation and subjection to female genital mutilation are some of the **child-specific forms of persecution** which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds.

## 9.4 A regional initiative: the Child Mobility Platform

The Child Mobility Platform is an **inter-agency initiative**, which includes Enda Tiers-Monde, ILO, IOM, MAEJT (Mouvement Africain des Enfants et Jeunes Travailleurs), Plan International, Save the Children Sweden, Terre des Hommes and UNICEF. It was created in 2008 with the objective to **better understand child mobility in West and Central Africa** as well as **child protection mechanisms** within concerned communities and families. Although it is a regional project, it focuses more specifically on Benin, Burkina Faso, Côte d'Ivoire, Guinea, and Togo.

The Child Mobility Platform has carried out research and facilitated dialogue on child protection vis-à-vis mobility. It underlines the need to understand the nature, patterns, trends, motivation and norms underlying the mobility of children, as well as to base programme interventions on a clear understanding of social norms and motivations for moving. It advocates for the identification of harmful situations and factors that increase vulnerability in order to prevent risks and increase security for children on the move. It also promotes debates in the communities to determine what is understood in a local context under such terms as 'rights', 'child', or 'decent work'.

The Platform has formulated six joint positions which guide its work:

1. **All children on the move are entitled to protection**, in respect of their best interests.
2. Trafficking is a crime that must be fought, but **not all children on the move are victims of trafficking**.
3. Child mobility requires that measures be taken to **reduce the vulnerability of children** and increase their chances for personal development at local, national and regional levels.
4. **Community-based mechanisms** for the accompaniment and protection of children form an integral part of more global child protection measures.
5. Protecting children on the move requires **harmonisation between local social norms, national laws and international standards**.
6. The **effective participation of children** and child/youths organisations is an essential element to include in child protection measures.

The Child Mobility Platform has produced recommendations on how to develop mechanisms to protect children while they are on the move. As detailed above, these mechanisms should involve local communities, families and all state and non-state actors concerned in countries or communities of origin, transit and destination. Following these findings, the project is preparing for a new operational phase, during which some of these recommendations could be piloted.

## Chapter 10.

# Cooperation and Referral of Victims of Trafficking and other Persons on the Move who have Specific Protection and Assistance Needs

The cooperation of all actors dealing with migration, asylum and human rights is crucial to providing comprehensive and effective protection responses in mixed migration situations. This chapter provides information on guidelines and tools which can be used when establishing cooperation and referral mechanisms, in particular to address the protection and assistance needs of victims of trafficking.

### 10.1 Basics of cooperation amongst key actors

Identifying vulnerable persons on the move, ensuring that their human rights are upheld and respected, and providing needs-based assistance requires **cooperation** amongst a variety of actors. The different mandates, approaches, and priorities of all the actors concerned need to be understood and built upon. Through communication and cooperation, these differences can be turned into strengths to better address the protection and human rights concerns of vulnerable persons on the move.

While **coordination mechanisms** are always useful at a general coordination level to link agencies, organisations and activities, they are essential at the operational level when implementing protection and assistance measures. The main stages of protection and assistance delivery are identifying the beneficiaries and their specific needs, providing emergency assistance if required, referring cases to relevant partners for specialised services, putting in place protection and assistance measures, and finding appropriate durable solutions.

An initial **mapping of the relevant stakeholders** is usually the first step in establishing a coordination mechanism. This assessment can help identify the existing legal framework, national and international actors on the ground, their role and capacity to protect and assist different categories of persons on the move, and potential gaps. While a general mapping of actors involved in questions of protection and mixed migration

can facilitate overall coordination, a more limited mapping can be done when a specific protection problem needs to be addressed. These mappings help to understand the degree of communication and relationships that already exists amongst the actors identified, and to identify opportunities for synergies and coordinated interventions. A successful coordination mechanism builds first and foremost on existing national structures and has national ownership.

### **FACTBOX – Challenges and advantages of cooperation in the field of trafficking in persons**

Trafficking in persons is a good example of a specific protection problem which cannot be addressed without cooperation. There is not a single actor/instance that would be able to successfully carry out a full counter-trafficking strategy alone, and cooperation with a multitude of partners is therefore absolutely necessary.

#### **Some common challenges:**

- Rivalries between institutions and competition for funding
- Lack of confidence amongst actors
- Lack of understanding of the nature of the work of the different actors
- Misinformation, miscommunication, and lack of transparency
- Different levels of institutional support
- Differing priorities
- Frequent rotation of staff
- Lack of clarity and understanding of the common objectives
- Differing levels of respect for agreements and procedures
- Problematic management of information and resources due to the number of actors involved

#### **Some common advantages:**

- Increased understanding of different roles
- Enhanced communication and exchange of information
- Enhanced mutual trust



- Enhanced transparency
- Enhanced capacity and speed of reaction of individual partners
- Better results in projects
- Improvement of procedures and structures
- Reduced duplication of efforts

## 10.2 Principles and tools of cooperation

Actors coming into a cooperative agreement should agree, at minimum, on **basic principles**. Below are some key principles which should underpin institutional cooperation in responding to the needs of persons on the move in need of assistance and protection:

- Commitment to ensuring that vulnerable persons on the move are identified and offered the best available protection and assistance;
- Self-determination of the persons concerned, including their involvement in decision-making, and non-discrimination;
- Individualised approach in needs assessment and assistance provision;
- Application of international human rights law, including refugee law, and other relevant international legal standards;
- Best interests of the child as the overriding priority;
- Respect for each other's mandates, roles, expertise, capacities, and internal processes;
- Transparent collaboration and cooperation;
- Responsible information-sharing with due regard to data protection standards, including obtaining consent to share information on a need-to-know basis;
- Inclusive consideration of the role and function of other partners in meeting the needs and upholding the rights of the beneficiary.

The overriding principle in supporting persons in need of protection, and specifically refugees and victims of trafficking, is that the **best interests of the individual are paramount**, which includes ensuring that they are fully aware of all aspects of the process of assistance and protection, and that short term interventions do not compromise longer-term solutions.

Following these principles, and based on the results of the situation assessment and the mapping of actors, an appropriate **coordination structure** and **mechanisms of cooperation** should be developed. Setting out the parameters of collaboration and using the tools described in this chapter could help to overcome the challenges intrinsic to cooperation and achieve the protection objectives. The following **tools and procedures** can be helpful to establish an efficient cooperation structure:

- **Terms of Reference (ToR)** establishing common objectives and procedures should be drafted and agreed upon.
- The most common form of cooperation agreement is a **Memorandum of Understanding (MoU)** between the key service providers, for example governmental agencies, civil society actors and international organizations. An MoU sets out the parameters of cooperation, including **funding**, either as a general framework agreement or as establishing the terms of cooperation for a specific project or intervention.
- Developing a **Strategy**, an **Action Plan** and/or a **Work Plan** will help to think in practical terms how and in what time-frame the set objectives can be attained.
- **Standard Operating Procedures (SOPs)** detail all the steps and activities of a cooperative project or intervention. SOPs are developed to set standards, to define roles and procedures, and to guarantee quality of services as well as fairness and non-discrimination in service provision. Well-defined SOPs increase **transparency and consistency** by clearly dividing responsibilities and tasks according to expertise.
- Designating **focal points** in each organization and providing possibilities for informal communication helps ensuring fluidity and consistency of action.
- Including an **evaluation mechanism** in the ToR and the Work Plan of a group of partners supports the realisation of the objectives of the group. Setting **target indicators** for all stages of the cooperation process facilitates the evaluation.

➡ **Emergency Cases:** Special consideration should be given to the development and financing of coordinated protection mechanisms particular to situations in which a person's life or well-being would be threatened unless immediate and appropriate action, such as relocation or placement in a safe house, is taken.

### 10.3 Referral mechanisms

Actors coming into direct contact with persons on the move will rarely be in a position to provide them with all the necessary services, and will therefore need to refer them to other actors for complementary action. An individual might also come into contact with one actor, but fall under the mandate of another, or under several mandates. A multidisciplinary and cross-sectoral approach is therefore essential to the development of an effective referral mechanism. The basic aims of a **referral mechanism** are to ensure that the human rights of persons in need of assistance and protection are respected, and to provide an effective system to refer the individuals concerned to appropriate services. Potential services required may include: legal aid, counselling, specialised medical treatment, or any other specific type of assistance. Developing an effective referral mechanism also requires identifying the



Opening of the Arlit transit centre in Agadez, Niger. See example p.91 © IOM

existing needs for **training** and providing the required capacity-building to the network members. It is essential that all members reach a **common understanding of key concepts and issues**, know exactly which services other institutions deliver, know how to identify protection needs, and are able to deliver quality protection and/or assistance in their respective field. The existence of functioning referral mechanisms in countries of destination, transit, and origin can give vulnerable persons on the move the opportunity to access comprehensive and inclusive systems of support.

### **TOOLBOX – Cooperation mechanism to facilitate the protection of trafficked persons**

Persons who have been or are at risk of being trafficked may have a well founded fear of persecution or be at risk of serious harm. There is therefore a need to ensure that appropriate and effective **referral mechanisms** are established between the institutions involved in anti-trafficking activities and those responsible for granting international protection. In this context, IOM and UNHCR have developed a **Framework for Coordination in the Identification of Victims of Trafficking**, which can be replicated or drawn upon for other categories of persons in need of protection and/or assistance. According to the framework, the main steps of a referral mechanism for victims of trafficking are the following:

#### **1. Initial contact/identification**

- Conduct an initial screening, preferably using a pre-established screening form, to determine the immediate needs of the individual and gather information about their profile and reasons for movement.
- Identify any immediate protection needs to be addressed urgently (need for safe shelter, etc.).

#### **2. Referral**

- The trafficking protection institution should systematically refer to the asylum institution those people who may need asylum.
- An asylum institution which identifies a victim of trafficking not in need of international protection should refer the case to the trafficking protection institution.



### 3. In depth interview and/or status determination

- The following specific issues should be taken into consideration during the in-depth interview:
  - Fear of return to country of origin
  - Fear for the individual's safety or that of their family in country of origin, transit, current location, or intended destination
  - Interest in pressing charges or testifying as a witness
  - Interest in accessing temporary residency or asylum procedures
  - Interest in claiming compensation
- If an individual is seeking asylum, appropriate asylum institutions should conduct a refugee status determination interview.

### 4. Cooperation in provision of assistance and protection according to mandates

- If the individual is identified as an asylum seeker or a refugee, and not a victim of trafficking, the asylum institution will take the lead in the case and be responsible for extending the necessary protection and assistance (see *Chapter 4*).
- If the asylum institution identifies that a refugee is also a victim of trafficking, the asylum institution should work closely with the trafficking protection institution and other state or non-state actors to address the protection and assistance needs of the victim (see *Chapter 7 and 8*).
- If the individual is identified neither as a victim of trafficking nor as a refugee, but has protection and assistance needs, the individual should be referred to the appropriate state and/or non state entities (for instance IOM).

## TOOLBOX – Joint screening forms

Joint screening forms can be developed to facilitate referral procedures and ensure harmonisation of action. Below is an **example** of such a form concerning intervention options for a vulnerable person on the move which can be adapted to specific contexts. All actors using this form should have a common understanding of the different categories of persons with protection needs or specific vulnerabilities requiring attention. 

| Will the individual be referred for additional assistance? |  |  |  |                                |   |                                |
|--|--|--|--|--------------------------------|---|--------------------------------|
| If yes, please tick the appropriate box(es) below:         |  |  |  |                                |   |                                |
| Categories of Persons with Needs                           | Asylum-seeker <input type="checkbox"/> | Victim of Trafficking <input type="checkbox"/> | Woman at Risk <input type="checkbox"/> | Minor <input type="checkbox"/> | Older Person at risk <input type="checkbox"/> | Other <input type="checkbox"/> |
| <b>Individual referred to:</b>                             |  |  |  |                                |   |                                |
| Reception services (clothing, accommodation, food, etc.)   |  |  |  |                                |   |                                |
| Emergency relocation                                       |  |  |  |                                |   |                                |
| Immediate medical attention                                |  |  |  |                                |   |                                |
| Referral to Victim of Trafficking process                  |  | e.g. IOM                                       |  |                                |   |                                |
| Referral to Asylum Process                                 | e.g. UNHCR                             |  |  |                                |   |                                |
| Family tracing / Reunification                             |  |  |  |                                |   |                                |
| Best Interests Determination                               |  |  |  |                                |   |                                |
| Other (please specify):                                    |  |  |  |                                |   |                                |
| <b>URGENT ACTION REQUIRED BY:</b>                          |  |  |  |                                |   |                                |

## **EXAMPLE – A mixed migration snapshot: the experience in Agadez, Niger**

In remote areas, assistance provided by NGOs and international organizations may be the only source of assistance and protection for vulnerable persons on the move. One such case is Agadez in Niger, where, upon the request of the authorities, IOM has initiated a pilot project to meet the most urgent needs of vulnerable and stranded persons on the move. The Agadez Region makes up about half of the total land area of Niger, but has a population density of only 0.5 people per square kilometre. This isolated and harsh Sahelian region is known throughout West Africa to be the meeting point of several irregular migration routes.

In November 2009, with the support of the Italian Cooperation, IOM opened a transit centre in Dirkou to cater to vulnerable persons on the move, many of whom being returned from North Africa. In May 2010, another centre was opened in Arlit to complement the humanitarian assistance mechanism. Both centres provide a wide range of services, such as temporary shelter, medical care, nutritional care, and return and reintegration in the country of origin on a voluntary basis. IOM staff conduct interviews and carry out screenings to establish the profile of the persons on the move (place of origin, reasons for moving, routes taken, etc.) and understand their needs. IOM works with a wide range of local stakeholders to ensure that access to assistance is equitable and that services reach those in need. Sensitisation activities on the dangers of irregular migration are conducted through discussions, sketches and other activities. The transit centres also organise trainings on business creation and management for those who wish to return and reintegrate.

A coordination mechanism was set up to facilitate referrals of vulnerable migrants, asylum seekers and refugees<sup>1</sup> in order to help them access assistance and protection, whether in Agadez or in Niamey. The multi-disciplinary coordination effort draws together IOM, the Ministries of



<sup>1</sup> Since December 2010 UNHCR has returned to Niger and will join the coordination efforts to assist and protect vulnerable persons on the move, and specifically asylum seekers and refugees.

Interior, Health and Community Development, the Red Cross/ Crescent Society of Niger, the National Commission for Refugees, local authorities, the Consulate of Niger in Sabbah (Libya), law enforcement agencies, Doctors Without Borders Spain and other NGOs. To address the specific protection needs of children who are travelling amongst adults returning from North Africa through the Agadez Region, a network was created by the national child protection services, IOM, UNICEF and local NGOs. While these referral systems still need to be further developed and more service providers need to be active in the region, this pilot project in Agadez is a good example of provision of direct assistance and protection to vulnerable persons on the move through a coordinated approach in the context of mixed migration flows.

## Conclusion

The key concepts related to the protection of refugees and other persons on the move introduced in this publication were discussed in greater depth during the workshops conducted in 2010 by IOM, UNHCR and partners. The trainings also focused on the implementation of the protection frameworks from a practical perspective, through group work, using case studies and actors' mappings. The regional events were followed by restitution workshops at the national level in 8 of the 15 ECOWAS countries.

The training workshops were successful in creating a common understanding of the different categories of persons on the move and their specific rights and needs, and in increasing awareness among the participants of the necessity to collaborate to uphold the rights of all persons on the move and address their protection needs.

The workshops also established that the recommendations of the Regional Conference on Refugee Protection and International Migration in West Africa are still valid. While participants recognized that a lot has been achieved since November 2008 when the conference was held, they also identified a number of areas which continue to require specific attention. It appeared that greater appropriation of the recommendations by all actors involved in protection and mixed migration, and a closer monitoring of progress made are still needed to achieve effective implementation.

The following recommendations emerged from the various workshops:

- To continue discussions at the national level amongst key actors on their specific mandates, as well as on overlapping and complementary activities they carry out in the field of protection and mixed migration;
- To formalise the coordination of activities linked to the protection of persons on the move and to create referral mechanisms at the national level;
- To reinforce the link between international and regional efforts, and the national realities and actors on the ground, including through a wider distribution of key instruments and documents, as well as through the sharing of best practices;

- To organize future trainings at the national level, with the technical support of IOM, UNHCR and other specialized agencies, to target a broader set of actors, particularly those active in border areas and law enforcement officials;
- To increase the provision of appropriate services, such as legal advice, counselling and safe shelters, and to ensure access to such services;
- To support the establishment of additional return and reintegration programs for vulnerable persons on the move who are not in need of protection and wish to return to their country of origin;
- To improve data collection and analysis, including through increased coordination and leadership in this field;
- To direct more resources to the implementation of the ECOWAS Free Movement Protocols in their application to migrants and refugees.

## Tools and Resources

### **ECOWAS Commission**

Economic Community of West African States, [www.ecowas.int](http://www.ecowas.int)

### **ILO**

International Labour Organization, [www.ilo.org](http://www.ilo.org)

### **IOM**

International Organization for Migration, [www.iom.int](http://www.iom.int)

### **OHCHR**

Office of the High Commissioner for Human Rights, [www.ohchr.org](http://www.ohchr.org)

### **UNHCR**

United Nations Refugee Agency, [www.unhcr.org](http://www.unhcr.org)

### **UNICEF**

United Nations Children's Fund, [www.unicef.org](http://www.unicef.org)

### **UNODC**

United Nations Office on Drugs and Crime, [www.unodc.org](http://www.unodc.org)

## 1. International Conventions

### **Trafficking in persons**

- Convention against Transnational Organized Crime, 2000  
[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000  
[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000  
[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_smug\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf)

### **Refugees**

- Convention Relating to the Status of Refugees, 1951  
<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>
- Protocol Relating to the Status of Refugees, 1966  
<http://www2.ohchr.org/english/law/pdf/protocolrefugees.pdf>

- Convention Relating to the Status of Stateless Persons, 1954  
*<http://www2.ohchr.org/english/law/pdf/stateless.pdf>*
- Convention on the Reduction of Statelessness, 1961  
*[http://untreaty.un.org/ilc/texts/instruments/english/conventions/6\\_1\\_1961.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf)*

### **Children**

- Convention on the Rights of the Child, 1989  
*<http://www.unhchr.ch/html/menu3/b/k2crc.htm>*
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000  
*<http://www2.ohchr.org/english/law/pdf/crc-sale.pdf>*
- ILO Convention No. 182 on the Worst Forms of Child Labour, 1999  
*<http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en>*

### **Human rights**

- International Covenant on Civil and Political Rights, 1966  
*[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)*
- International Covenant on Economic, Social and Cultural Rights, 1966  
*[http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)*
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990  
*<http://www2.ohchr.org/english/law/pdf/cmwr.pdf>*
- Convention on the Elimination of All Forms of Discrimination against Women, 1979  
*<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>*

## **2. Regional Instruments**

### **Regional instruments**

- African Charter on Human and Peoples' Rights, 1979  
*[http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html)*
- African Charter on the Rights and Welfare of the Child, 1990  
*[http://www.achpr.org/english/\\_info/child\\_en.html](http://www.achpr.org/english/_info/child_en.html)*
- AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009  
*[http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0541BB5F1E5A133BC12576B900547976/\\$file/Convention\(En\).pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/0541BB5F1E5A133BC12576B900547976/$file/Convention(En).pdf)*

- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

*[http://www.unhcr.se/Pdf/basics/OAU\\_Conv\\_Africa.pdf](http://www.unhcr.se/Pdf/basics/OAU_Conv_Africa.pdf)*

### **ECOWAS instruments**

- ECOWAS Declaration on the Fight against Trafficking in Persons, 2001  
*<http://www.achpr.org/english/Special%20Mechanisms/Women/ECOWAS%20declaration.pdf>*
- ECOWAS Protocol relating to Free Movement of Persons, Residence and Establishment, 1979  
*<http://www.unhcr.org/refworld/type,MULTILATERALTREATY,,CPV,492187502,0.html>*
- ECOWAS Supplementary Protocol A/SP/1.1/7/86 on the Second Phase (Right of Residence) of the Protocol relating to Free Movement of Persons, Residence and Establishment, 1986  
*<http://www.comm.ecowas.int/sec/index.php?id=asp010786&lang=en>*
- ECOWAS Supplementary Protocol A/SP/1.1/7/86 on the Third Phase (Right of Establishment) of the Protocol relating to Free Movement of Persons, Residence and Establishment, 1990  
*<http://www.comm.ecowas.int/sec/index.php?id=asp020590&lang=en>*
- Memorandum on Equality of Treatment for Refugees with other Citizens of Member States of ECOWAS in the Exercise of Free Movement, Right of Residence and Establishment, ECOWAS Commission, 2007  
*<http://www.unhcr.org/49e47c8d1e.pdf>*

### **3. Recommendations, Action Plans and Policy Papers**

- Agenda for Protection, UNHCR, 2003  
*<http://www.unhcr.org/refworld/docid/4714a1bf2.html>*
- AU.COMMIT Campaign Strategy Document 2009-2012, African Union, 2008  
*[http://www.africa-union.org/root/ar/index/AU\\_COMMIT\\_STRAT.doc](http://www.africa-union.org/root/ar/index/AU_COMMIT_STRAT.doc)*
- ECOWAS Common Approach on Migration, ECOWAS Commission, 2008  
*<http://www.oecd.org/dataoecd/17/2/41400366.pdf>*
- Ouagadougou Action Plan to Combat Human Trafficking, Especially Women and Children, 2008  
*[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/118211.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/118211.pdf)*
- Trafficking of Women and Girls: Report of the Secretary General A/63/215, 2008  
*<http://www.unhcr.org/refworld/docid/48dcc8762.html>*

## 4. Guidelines and Tools

### Trafficking in persons

- Ethical and Safety Recommendations for Interviewing Trafficked Women, WHO, 2003  
*<http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>*
- Guidelines on International Protection No. 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, UNHCR, 2007  
*<http://www.unhcr.org/443b626b2.html>*
- Guidelines on the Protection of Child Victims of Trafficking, UNICEF, 2006  
*[http://www.unicef.at/fileadmin/medien/pdf/UNICEF\\_Guidelines\\_on\\_the\\_Protection\\_of\\_Child\\_Victims\\_of\\_Trafficking.pdf](http://www.unicef.at/fileadmin/medien/pdf/UNICEF_Guidelines_on_the_Protection_of_Child_Victims_of_Trafficking.pdf)*
- IOM Handbook on Direct Assistance for Victims of Trafficking, IOM, 2007  
*[http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/CT%20handbook.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf)*
- The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs, UNHCR, October 2009  
*<http://www.unhcr.org/refworld/docid/4ad317bc2.html>*
- National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, OSCE/ODIHR, 2004  
*[http://www.osce.org/publications/odihr/2004/05/12351\\_131\\_en.pdf](http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf)*
- Recommended Principles and Guidelines on Human Rights and Human Trafficking, OHCHR, 2002  
*[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.pdf)*
- Refugee Protection and Human Trafficking: Selected Legal Reference Materials, UNHCR, 2008  
*<http://www.unhcr.org/refworld/docid/498705862.html>*
- Toolkit to Combat Trafficking in Persons, UNODC, 2008  
*[http://www.unodc.org/documents/human-trafficking/HT\\_Toolkit08\\_English.pdf](http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf)*
- UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Economic and Social Council (E/2002/68/Add.1), 2002  
*[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument)*

- UNODC Model Law against Trafficking in Persons, UNODC, 2009  
[http://www.unodc.org/documents/humantrafficking/Model\\_Law\\_against\\_TIP.pdf](http://www.unodc.org/documents/humantrafficking/Model_Law_against_TIP.pdf)

## Migration

- International Migration Law No.1, Glossary on Migration, IOM, 2004  
[http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&products\\_id=198](http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=198)
- IOM-ILO-OSCE Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006  
[http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&cPath=19&products\\_id=144](http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=19&products_id=144)
- International Migration Law and Policies: Responding to Migration Challenges in Western and Northern Africa, IOM, 2010  
[http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&cPath=1&products\\_id=585](http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=1&products_id=585)
- Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends, IOM Migration Research Series No.32 , IOM, 2008  
[http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&products\\_id=87](http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=87)
- Law and Migration in West Africa: Training tools, IOM  
<http://www.iomdakar.org/droit-migrations-ao/en/index.php>
- Migration Profiles for West Africa, IOM  
<http://www.iom.int/jahia/Jahia/policy-research/migration-research/migration-profiles/complete-forthcoming-migration-profiles/cache/offonce/>
- People on the Move – Handbook of selected terms and concepts, The Hague Process on Refugees and Migration, UNESCO, 2008  
<http://www.thehagueprocess.org/documents/THP-UNESCO-HANDBOOK-version-1.pdf>

## Refugee protection

- Refugee Protection and Mixed Migration: The 10-Point Plan in Action, UNHCR, 2009  
<http://www.unhcr.org/4aae18649.html>
- Refugee Protection and Mixed Migration: A 10-Point Plan of Action, UNHCR, 2007, Rev.1  
<http://www.unhcr.org/refworld/docid/45b0c09b2.html>

- An Introduction to International Protection. Protecting Persons of Concern to UNHCR, 2005  
*<http://www.unhcr.org/refworld/docid/4214cb4f2.html>*
- The Heightened Risk Identification Tool. User Guide, UNHCR, 2008  
*<http://www.unhcr.org/refworld/pdfid/46f7c0cd2.pdf>*
- UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UNHCR, May 2002  
*[http://www.justice.gov/eoir/vll/benchbook/resources/UNHCR\\_Guidelines\\_Gender.pdf](http://www.justice.gov/eoir/vll/benchbook/resources/UNHCR_Guidelines_Gender.pdf)*
- UNHCR Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, UNHCR, May 2002  
*<http://www.unhcr.org/refworld/docid/3d36f23f4.html>*
- UNHCR Handbook for the Protection of Women and Girls, 2008  
*<http://www.unhcr.org/protect/PROTECTION/47cfae612.html>*

## **Children**

- Human Rights of Migrant Children, International Migration Law No.15, IOM, 2008  
*[http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&products\\_id=78](http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=78)*
- Inter-agency Guiding Principles on Unaccompanied and Separated Children, ICRC, 2004  
*<http://www.unhcr.org/4098b3172.html>*
- UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, December 2009  
*<http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>*
- UNHCR Guidelines on Determining the Best Interests of the Child, UNHCR, 2008  
*<http://www.unhcr.org/refworld/docid/48480c342.html>*

## Selected References

*Agenda for Protection*, UNHCR, 2003

*Atlas des Migrations Ouest-Africaines vers l'Europe 1985-1993*, Robin, Nelly, 1996

*Atlas of Regional Integration in West Africa*, ECOWAS/CSAO/OCDE, 2008

*Away from Home – Protecting and supporting children on the move*, Reale, Daniela, Save the Children UK, 2008

*Challenges of Irregular Migration: Addressing Mixed Migration Flows*, IOM Discussion Note, nr: MC/INF/294, International Dialogue on Migration, 2008

*Developing Standard Operating Procedures to Facilitate the Protection of Trafficked Persons*, IOM and UNHCR Internal Reference Tool, 2009

*Human Rights of Migrant Children*, Touzenis, Kristina, International Migration Law No. 15, IOM, 2008

*The International Convention on Migrants Workers and its Committee*, Factsheet 24, OHCHR, 2005

*Kids Abroad: Ignore them, Abuse them or Protect them? Lessons on how to protect children on the move from being exploited*, Dottridge, Mike, Terre des Hommes International Federation, 2008

*The Mobility of the Population in West Africa*, French Ministry of Foreign and European Affairs, 2008

*Promoting Integration through Mobility: Free Movement and the ECOWAS Protocol*, RP No. 150, Adepoju, A., Boulton, A. & Levin, M., UNHCR, 2007

*Protecting the Human Rights of all Migrants*, Information note, OHCHR, 2010

*Refugee or Migrant? Why it Matters*, Refugees Magazine No.148, Issue 4, UNHCR, 2007

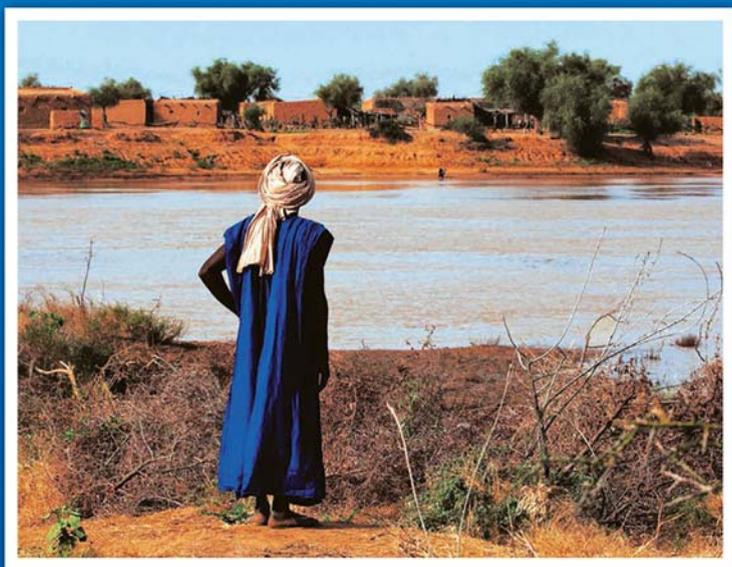
*Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, UNHCR, Rev.1, January 2007

*Regional Conference on Refugee Protection and International Migration in West Africa, Dakar, Senegal, 13-14 November 2008, Summary Report*, ECOWAS, IOM, OHCHR, UNHCR, 2008

*Treatment of Unaccompanied and Separated Children outside their Country of Origin*, Committee on the Rights of the Child, General Comment No. 6, 2005

*West Africa as a Migration and Protection Area*, Charrière, F. & Frésia, M., 2008





IOM International Organization for Migration

[www.iom.int](http://www.iom.int)



**UNHCR**  
The UN Refugee Agency

[www.unhcr.org](http://www.unhcr.org)