

NEWS & NOTES

Selected Developments related to Forced Migration: January-July 2022¹

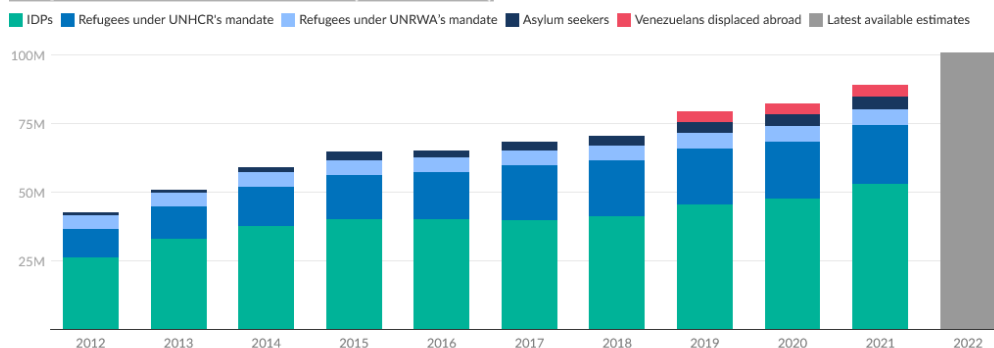
Ralf Roßkopf²

This is a compilation of news and notes of relevance for the field of forced displacement.

1. UNHCR Global Trends Report

As in the previous years, again, the United Nation High Commissioner for Refugees (UNHCR) confirmed a new record number of 89.3 million forcibly displaced worldwide (UNHCR, 2022a: p. 2). Considering the developments of 2022, UNHCR expects a further increase to up to 100 million forcibly displaced for the current year (UNHCR, 2022a: p. 7).

People forced to flee worldwide (2012 - 2022)



Note: 2022 figures are estimated using data available as of 9 June 2022

Source: UNHCR Refugee Data Finder

Source: UNHCR (2022, September 9): Global Forced Displacement. UNHCR: The UN Refugee Agency. <https://www.unhcr.org/globaltrends.html>; also see UNHCR, 2022: 7).

Compared to an increase in numbers from 2020 to 2021, when 89.3 million forcibly displaced were counted, the relative little number of 5.7 million displaced people who actually returned in 2021 (UNHCR, 2022a: p. 2; 6.4% when compared to the total) demonstrates the protracted character of many displacement situations. Defining protracted refugee situations “as those where more than 25,000 refugees from the same country of origin have been in exile in a given low- or middle-income host country for at least five consecutive years”, according to UNHCR estimations “the probability in these situations of someone remaining a refugee for at least five years – i.e. the minimum

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duration that UNHCR defines as protracted – varies between 63 and 99 per cent” (UNHCR, 2022a: p20).

In 2021, the number of internally displaced (53.2 million) doubled the number of refugees (27.1 million). Different from the mainstream perception in the developed Global North, low- and middle-income countries (83%) and especially neighboring countries (72%) have borne an extraordinary share of the burden (UNHCR, 2022a: p. 2). Taken together with the addressed protracted character of displacement situations, the total of 57,500 resettled refugees in 2021 (UNHCR, 2022a: p.2; i.e. 1.7% of the total) proves limited international solidarity.

2. Displacement from Ukraine

Since the attack of Russian troops on Ukraine on 24 February 2022, the International Organization for Migration (IOM) estimates the number of internally displaced within Ukraine as of 23 August 2022 at 6,975,000 (IOM, 2022). Additionally, according to UNHCR figures, on 7 September 2022, 7,154,448 million refugees from Ukraine have been registered in Europe (UNHCR, 2022d). Of those, 2.490.480 have been recorded in Russia, 1.365.810 in Poland, 1.003.029 in Germany, 427.696 in Czech Republic, 159.968 in Italy and 145.000 in Turkey.

According to a survey conducted in Belarus, Bulgaria, Hungary, Republic of Moldova, Poland, Romania, and Slovakia (UNHCR, 2022c), 86% of the refugee respondents were female, 47% held a university degree. 80% of the families were separated with military conscription (58%) and unwillingness to leave (50%) being the most prominent reasons. 63% have the near future intention to stay in their current host country (51% for safety reasons), 13% each would like to return to Ukraine or do not know, 11% plan to move to another host country, of which 28% aim for Germany, 9% for Canada, and 4% each for Norway and France.

3. Temporary Protection Regulation implemented for the first time

Having been considered a painful learning outcome of mass influxes into the EU of displaced people related to the disintegration of and wars in former Yugoslavia in the 1990 decade, the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof was meant to cope better and jointly with similar situations in the future. However, despite several influxes since, it was not until the outbreak of the Ukrainian war on 24 February 2022 that the Regulation was actually activated for the first time. Temporary protection is meant to be a form of protection for displaced people complementing refugee protection. It is

a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection (Art. 2 lit. a).

Following the procedure outlined in Art. 5 of Council Directive 2001/55/EC, the European Commission proposed a Council Implementing Decision on 2 March 2022 (European

Commission 2022), which the Council adopted by the respective Decision on 4 March 2022 (Council of the European Union, 2022), which is temporary for one year by nature (see Art. 4 para. 1 cl. 1; for extensions see Art. 4 para. 1 cl. 2 and para. 2 of Council Directive 2001/55/EC,).

According to its Art. 2, the Decision applies to Ukrainian nationals residing in Ukraine before 24 February 2022; stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and, family members of the persons referred to in points (a) and (b). Member States shall apply it or adequate national protection in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin. Members States may apply it to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin. At least some Member States have extended the scope of temporary protection accordingly or in different ways (UNHCR Regional Bureau for Europe, 2022: pp. 2-3).

4. European Union Agency for Asylum established

As of 19 January 2022 Regulation (EU) 2021/2303 came into force, establishing a European Union Agency for Asylum (EUAA) replacing and succeeding the European Asylum Support Office (EASO), established by Regulation (EU) No. 439/2010. Compared to its predecessor, the EUAA has a broadened mandate:

Mandate of EASO, Art. 2 Regulation (EU) No. 439/2010	Mandate EUAA Art. 2 Regulation (EU) 2021/2303
<ol style="list-style-type: none"> 1. The Support Office shall facilitate, coordinate and strengthen practical cooperation among Member States on the many aspects of asylum and help to improve the implementation of the CEAS. In this regard, the Support Office shall be fully involved in the external dimension of the CEAS. 2. The Support Office shall provide effective operational support to Member States subject to particular pressure on their asylum and reception systems, drawing upon all useful resources at its disposal which may include the coordination of resources provided for by Member States under the conditions laid down in this Regulation. 3. The Support Office shall provide scientific and technical assistance in regard to the policy and legislation of the Union in all areas having a direct or indirect impact on asylum so that it is in a position to lend its full support to practical cooperation on asylum and to carry out its duties effectively. It shall be an independent source of information on all issues in those areas. 4. -The Support Office shall fulfil its purpose in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its operating procedures and methods, its diligence in performing the duties assigned to it, and the information technology support needed to fulfil its mandate. 5. The Support Office shall work closely with the Member States' asylum authorities, with national immigration and asylum services and other national services and with the 	<ol style="list-style-type: none"> 1. For the purposes of Article 1, the Agency shall perform the following tasks: <ol style="list-style-type: none"> (a) facilitate, coordinate and strengthen practical cooperation and information exchange among Member States on their asylum and reception systems; (b) gather and analyse information of a qualitative and quantitative nature on the situation of asylum and on the implementation of the CEAS; (c) support Member States when carrying out their tasks and obligations in the framework of the CEAS; (d) assist Member States as regards training and, where appropriate, provide training to Member States' experts from all national administrations, courts and tribunals, and national authorities responsible for asylum matters, including through the development of a European asylum curriculum; (e) draw up and regularly update reports and other documents providing information on the situation in relevant third countries, including countries of origin, at Union level; (f) set up and coordinate European networks on third-country information; (g) organise activities and coordinate efforts among Member States to develop common analysis on the situation in countries of origin and guidance notes; (h) provide information and analysis on third countries regarding the concept of safe country of origin and

<p>Commission. The Support Office shall carry out its duties without prejudice to those assigned to other relevant bodies of the Union and shall work closely with those bodies and with the UNHCR.</p> <p>6. The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.</p>	<p>the concept of safe third country (the 'safe country concepts');</p> <ul style="list-style-type: none"> (i) provide effective operational and technical assistance to Member States, in particular when their asylum and reception systems are subject to disproportionate pressure; (j) provide adequate support to Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013; (k) assist with the relocation or transfer of applicants for or beneficiaries of international protection within the Union; (l) set up and deploy asylum support teams; (m) set up an asylum reserve pool in accordance with Article 19(6) (the 'asylum reserve pool'); (n) acquire and deploy the necessary technical equipment for asylum support teams and deploy experts from the asylum reserve pool; (o) develop operational standards, indicators, guidelines and best practices in regard to the implementation of Union law on asylum; (p) deploy liaison officers to Member States; (q) monitor the operational and technical application of the CEAS with a view to assisting Member States to enhance the efficiency of their asylum and reception systems; (r) support Member States in their cooperation with third countries in matters related to the external dimension of the CEAS, including through the deployment of liaison officers to third countries; (s) assist Member States with their actions on resettlement. <p>2. The Agency shall, on its own initiative, engage in communication activities in the fields within its mandate. It shall provide the public with accurate and comprehensive information about its activities. The Agency shall not engage in communication activities that are detrimental to the tasks referred to in paragraph 1 of this Article. Communication activities shall be carried out without prejudice to Article 65 and in accordance with the relevant communication and dissemination plans adopted by the Management Board.</p>
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EUAA's Asylum Knowledge Website (2022) is a rich source of information and expertise with regard to "Asylum Reports"; "Information and Analysis on Developments in Asylum"; "Data Analysis and Research"; "Country of Origin Information"; "Country Guidance" on main countries of origin; "Asylum Processes"; "Dublin Procedure"; "Reception", "Vulnerability, and last but not least support for "Courts and Tribunals" including the "Case Law Database", the "Quarterly Overview of Asylum Case Law" and a compilation of "Practical Tools and Guides".

As is shown by Recital 5 of the Preamble Regulation (EU) 2021/2303, the intention was to further strengthen the role and function of the former EASO "so as to not only support practical cooperation among Member States but to reinforce and contribute to ensuring the efficient functioning of the asylum and reception systems of the Member States".

As of 31 December 2023, EUAA will also be in charge of a monitoring mechanism for the operational and technical application as well as the thematic or specific aspects of the Common European Asylum System (CEAS), Art. 14, 73 para. 2 Regulation (EU) 2021/2303, where serious concerns regarding the functioning of a Member State's asylum or reception system could lead to escalating measures, including EUAA monitoring

exercises, recommendations by the EUAA and based on its own assessments or even on-site visits by the Commission. If the Member State concerned does not comply with recommendations by the Commission, the latter may make a proposal for a Council implementing act in accordance with Article 22(1), identifying one or more of the measures set out in Article 16(2) to be taken by the Agency, including deploying migration management support teams (Art. 21), asylum support teams (Art. 19-20), and technical equipment (Art. 23). In this regard, an asylum reserve pool of a minimum of 500 experts will be set up at the immediate disposal of EUAA (Art. 19 para. 6).

5. Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement

On 13 April 2022, the Government of the United Kingdom of Great Britain and Northern Ireland (UK) and the Government of the Republic of Rwanda signed a Memorandum of Understanding (MoU) for the Provision of an Asylum Partnership Arrangement (Home Office, 2022). It aims to prevent and combat illegally facilitated and unlawful cross border migration by allowing the UK to reallocate asylum seekers whose claims are not being considered by the United Kingdom to Rwanda, which will process their claims and settle or remove (as appropriate) individuals after their claim is decided.

No limitations are mentioned in terms of numbers or further criteria for those to be relocated but the need for Rwanda's prior approval "taking into account Rwanda's capacity to receive them". Rwanda obliges itself to receive, accommodate and support the relocated individuals adequately to ensure their health, security and wellbeing as well as to

process their claim for asylum, in accordance with the Refugee Convention, Rwandan immigration laws and international and Rwandan standards, including under international and Rwandan human rights law, and including, but not limited to ensuring their protection from inhuman and degrading treatment and refoulement. (Home Office, 2022: Item 2.1)

Recognized refugees would be granted refugee status in Rwanda. For those not recognized but in need for humanitarian protection as "return to their country of origin would result in a real risk of their being subject to inhuman, degrading treatment or torture or a real risk to their life" (Item 2.1), Rwanda would "provide treatment consistent with that offered to those recognised as refugees and permission to remain in Rwanda" (Item 2.1). A vague outlook is given for future arrangements "to resettle a portion of Rwanda's most vulnerable refugees in the United Kingdom" (Item 16).

UNHCR has critically assessed the arrangement and concluded:

[T]he UK-Rwanda arrangement fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum-seekers. This arrangement, which amongst other concerns seeks to shift responsibility and lacks necessary safeguards, is incompatible with the letter and spirit of the 1951 Convention.

In UNHCR's view, the UK-Rwanda arrangement cannot be brought into line with international legal obligations through minor adjustments. The serious concerns outlined in the present analysis require urgent and appropriate consideration by the governments of the UK and

Rwanda in line with their obligations under well-established and binding norms of international refugee law. (UNHCR 2022d)

On 14 June 2022, the European Court of Human Rights (ECtHR) granted urgent interim measures in the case of N.S.K. v. the United Kingdom (application no. 28774/22, formerly K.N. v. the United Kingdom; also see the Jurisdiction Section in this issue) and indicated that the applicant should not be removed to Rwanda until three weeks after the delivery of the final domestic decision in his ongoing judicial review proceedings. The Court is quoted:

The Court had regard to the concerns identified in the material before it, in particular by the United Nations High Commissioner for Refugees (UNHCR), that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to “serious triable issues”. In light of the resulting risk of treatment contrary to the applicant’s Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the European Convention on Human Rights) and the absence of any legally enforceable mechanism for the applicant’s return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the Court has decided to grant this interim measure to prevent the applicant’s removal until the domestic courts have had the opportunity to first consider those issues. (European Court of Human Rights, 2022a)

Further requests for interim measures were considered in the aftermath (European Court of Human Rights, 2022b).

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