



Inter-Parliamentary Union
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A guide to international refugee protection and building state asylum systems

Handbook for Parliamentarians N° 27, 2017

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Foreword



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Providing protection to people fleeing in search of refuge is one of humanity's most long-standing traditions – a shared value embedded in many religious and cultural traditions, and now part of international law. It is a value that has stood the test of time, and was most recently articulated by all 193 United Nations member states in the New York Declaration on Refugees and Migrants, adopted in September 2016.

The Declaration was a resounding reaffirmation of the fundamental principle of refugee protection, at a moment when the number of people fleeing their homes has reached levels not seen in decades. There are now almost 66 million people displaced from their homes by conflict, violence and persecution, of whom around one third have fled across borders as refugees – a similar level to the mid-1990s, when the aftermath of the Cold War triggered similar upheaval. The magnitude and complexity of forced displacement today is directly linked to the prevalence, scale and longevity of today's conflicts, and the inability of the international community to find the unity of purpose necessary to resolve them.

More than 80% of those fleeing their countries as refugees find protection in neighbouring ones, whose people and governments are often struggling to manage the impact of a nearby conflict and to address their own development challenges. Over half of all refugees are children – compared to around one third of the world’s general population. Fewer than one in five refugees move further afield; when they do so, it is often due to a lack of prospects, and inadequate support, including for the countries and communities hosting them. Those who move generally do so part of irregular migratory flows, encompassing people moving for a broad range of reasons including economic opportunity. It is important to maintain a clear distinction between refugees and migrants, with refugees holding a particular status in international law as they are unable to return home because of conflict and persecution – albeit that both groups encounter many of the same risks, often perishing or exposed to physical harm on risky overland and sea voyages.

The New York Declaration also came at a moment in which the principle of refugee protection had been tested by the actions of some states – and indeed, this continues to be the case. In certain countries and regions, access to asylum is restricted, with borders closing, detention on the increase and legal and procedural impediments blocking access to protection. Confronted by seemingly intractable conflicts, by heightened security concerns, and in difficult economic times, some governments have responded by closing their doors, pursuing arrangements that ‘outsource’ refugee protection elsewhere, and allowing the rhetoric of xenophobia and nationalism to go unchecked. Yet, at the same time there have also been many positive examples of moral courage and leadership, of governments stepping up and keeping their borders open as thousands flee, and countless acts of solidarity from individuals and communities all over the world.

The New York Declaration emphasises that protecting refugees requires the engagement of all parts of society. Parliamentarians have a crucial role to play in this respect – ensuring the continued effectiveness of the international refugee protection regime and establishing and maintaining State asylum systems that uphold protection principles and are able to respond effectively to contemporary challenges.

This Handbook has two aims: to inform parliamentarians about the founding principles and obligations of international refugee law, and to mobilize their support for establishing and maintaining fair and effective national asylum systems, in line with international standards. These are essential for governments to be able to identify people in need of international protection, and to ensure that people who have been forced to flee persecution and conflict can continue to seek and enjoy asylum, in line with the 1951 Refugee Convention and its 1967 Protocol. We commend it to you as an important resource, and trust that it will play a role in translating the promise of the New York Declaration into action.



Filippo Grandi
United Nations
High Commissioner for Refugees



Martin Chungong
Secretary General,
Inter-Parliamentary Union

Abbreviations

AIDS	Acquired immunodeficiency syndrome	FGM	Female genital mutilation
BID	Best interest determination	HIV	Human immunodeficiency virus
CAR	Central African Republic	HRC	UN Human Rights Committee
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment	IARLJ	International Association of Refugee Law Judges
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	ICAO	International Civil Aviation Organization
COI	Country of origin information	ICC	International Criminal Court
CRC	Convention on the Rights of the Child	ICCPR	International Covenant on Civil and Political Rights
CRPD	Convention on the Rights of Persons with Disabilities	ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CTD	Convention travel document	ICESCR	International Covenant on Economic, Social and Cultural Rights
DRC	Democratic Republic of Congo	ICRC	International Committee of the Red Cross
EASO	European Asylum Support Office	IDP	Internally displaced person
ECOSOC	Economic and Social Committee of the United Nations	IFRC	International Federation of Red Cross and Red Crescent Societies
EU	European Union	IMO	International Maritime Organization
ExCom	Executive Committee of the High Commissioner's Programme	IOM	International Organization for Migration
FAO	Food and Agriculture Agency	IPU	Inter-Parliamentary Union

LGBTI	Lesbian, gay, bisexual, transgender and inter-sex	TPS	Temporary protected status (provided in United States of America)
NGO	Non-governmental organization	UASC	Unaccompanied or separated child
NHRI	National human rights institutions	UDHR	Universal Declaration of Human Rights
OAS	Organization of American States	UN	United Nations
OAU	Organization of African Unity (now African Union)	UNAIDS	United Nations Programme on HIV/AIDS
OCHA	UN Office for the Coordination of Humanitarian Affairs	UNCLOS	UN Convention on the Law of the Sea
OHCHR	UN Office of the High Commissioner for Human Rights	UNDP	UN Development Programme
OIC	Organization of the Islamic Conference (now Organization of Islamic Cooperation)	UNESCO	UN Educational, Scientific and Cultural Organization
PRRA	Pre-removal risk assessment (Canada)	UNHCR	United Nations High Commissioner for Refugees
SAPS	South African Police Service	UNICEF	UN Children's Fund
SAR	Search and rescue	UNODC	UN Office on Drugs and Crime
SGBV	Sexual and gender-based violence	UNRWA	United Nations Relief Works Agency for Palestine Refugees in the Near East
SOLAS	International Convention for the Safety of Life at Sea	UPR	Universal periodic review
SOPs	Standard operating procedures	WFP	World Food Programme
TBP	Toronto Bail Programme	WHO	World Health Organization

Introduction



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As this Handbook goes to press, there are more refugees in the world than at any time since the end of the Second World War. The causes of contemporary displacement have become ever more complex, as conflict, violence and human rights abuses are increasingly intertwined with ethnic and religious animosities, acute poverty and deprivation, and environmental factors linked to climate change. An alarming number of refugees are living in limbo because of conflicts that have gone on for years or even decades, with no solutions in sight. More than half of the world's refugees are children and, if nothing changes, their children will be refugees, too.

Whose responsibility are refugees? Why are they so often regarded as a threat, rather than as people who are threatened? What is the point of a Handbook for Parliamentarians, most of whom have nothing to do with the violence and persecution that force millions to flee for their lives?

People become refugees when the rule of law in their home countries breaks down. They depend on the rule of law to find protection in other countries. They hope for the

restoration of the rule of law in their own countries, to be able to return home one day. Parliamentarians are central to the process of developing laws, policies and regulations to shelter and protect victims of war and persecution, while ensuring that the legitimate interests of host States are respected. This Handbook seeks to help parliamentarians to fulfil this important task.

The Handbook sets out the international legal framework on which refugee protection is built, and from which it draws continually. It explains the value for States of acceding to international treaties concerned with refugee protection, in particular the 1951 Convention relating to the status of refugees and its 1967 Protocol. The central elements of a refugee protection system are outlined, from entry and reception to status determination, the rights and duties of refugees, and durable solutions. The Handbook also seeks to shed light on difficult topics such as border control, racism and xenophobia, the return of persons not in need of international protection, and contemporary concerns about security.

In this 21st century, no continent is immune from the problem of forced displacement, and many countries and communities demonstrate extraordinary generosity and compassion toward those forced to flee. But the global distribution of refugees remains heavily skewed towards the less wealthy regions. Almost nine out of every ten refugees under UNHCR's mandate are living in low- and middle-income countries, often very close to situations of conflict. Countries that rank among the least developed nations host one-quarter of the world's refugees.

The international refugee protection system developed in the aftermath of the Second World War was designed in response to the potentially destabilizing effects of population movements. International solidarity and responsibility-sharing are essential but often elusive elements of that system, vital to safeguard the rights of refugees wherever they are, and to support the countries hosting them.

At a time when solidarity and responsibility-sharing are needed more than ever, States are preoccupied by security concerns stemming from international terrorism, and there is a new emphasis on border control. Hostility toward foreigners is on the rise in many countries, and physical and legal barriers intended to thwart irregular migration are affecting many people who try to reach safety. As this Handbook seeks to explain, managing borders and protecting refugees are not mutually exclusive. States can and should put in place robust mechanisms to identify individuals who need protection, just as they can and should identify persons who may pose a security threat.

Of course there are no quick fixes or easy solutions, whether at the national or international level. As opinion leaders, Parliamentarians can help to make clear that populist politics and uninformed public debates threaten the fabric of society. They can convey the message that the response to refugee flows needs to be based on fundamental principles of humanity and human rights, including the right to seek and enjoy asylum from persecution. History has shown that doing the right thing for victims of war and persecution engenders goodwill and prosperity for generations, and fosters stability in the long run.

In 2016, recognizing that the challenges posed by human mobility are “above all moral and humanitarian,” the UN General Assembly approved the [New York Declaration for Refugees](#).

[and Migrants](#). The Declaration reaffirms the importance of the 1951 Convention and its 1967 Protocol, while emphasizing that the “scale and nature of refugee displacement today require us to act in a comprehensive and predictable manner.”

The General Assembly therefore agreed to develop comprehensive responses for situations involving large movements of refugees. The Declaration explains that these responses are to be “based on the principles of international cooperation and on burden- and responsibility-sharing,” so as to be “better able to protect and assist refugees and to support the host States and communities involved.” This important international action will need backing at every level of society, especially from Parliamentarians. It is hoped that this Handbook will make a contribution toward achieving the goals set by the New York Declaration.

“ The Inter-Parliamentary Union, ... Calls on governments and parliaments to assume responsibility for protecting the rights of refugees and their right to international protection, and also calls on parliaments and governments to fulfil their obligations to protect refugees and asylum-seekers.”

Enforcing the responsibility to protect: the role of parliament in safeguarding civilians’ lives, [Resolution](#) adopted by consensus by the 128th IPU Assembly, Quito, 2013

Using this Handbook

Who is the Handbook for?

This Handbook is primarily intended for **parliamentarians and policy makers** involved in preparing and drafting laws and policies to respond to the arrival and presence of asylum-seekers and refugees.

Others working with refugees or commenting on refugee matters may also find the Handbook useful, including:

- Mayors and regional/local government officials;
- Staff from a wide-range of government departments, including border guards, personnel working in reception facilities, child protection services, status determination officers and many others;
- Members of the judiciary, staff of national human rights institutions (NHRIs) and ombudspersons;
- Journalists;
- National civil society groups, faith-based organizations, other non-governmental organizations (NGOs);
- Humanitarian aid workers; and
- Staff of international organizations and agencies.

What does the Handbook aim to do?

The Handbook seeks to:

- Assist these actors in developing laws and policies to respond promptly and effectively to the arrival of asylum-seekers and refugees;
- Outline elements of protection-sensitive entry systems to respond to mixed movements of people while upholding international protection principles;
- Set out elements of fair and efficient asylum procedures;
- Help to ensure that international protection is accorded to those who need it, in line with international refugee law standards;
- Promote greater tolerance and respect for refugees; and
- Identify initiatives to support durable solutions for refugees and others in need of international protection.

The Handbook aims to be as accessible and yet as comprehensive as possible. Given the complexity of some topics, it cannot go into full detail on every issue. This is why references to further materials are provided throughout the Handbook.

Each Chapter:

- Sets out the applicable international standards that provide the framework for the response;
- Suggests appropriate responses and measures to be taken;
- Provides **examples** of positive national and regional practice;
- Includes relevant quotations from authoritative bodies;
- Provides **references** to UNHCR and other publications containing further information and guidance;
- Offers **checklists** for parliamentarians suggesting how certain issues can be addressed, although these checklists are not exhaustive and not all issues will be relevant in each country.

A number of refugee stories throughout the Handbook highlight the impact of flight and displacement on individual refugees and their families.

Refugee story:

A long and perilous route to safety

After nearly two years on the run from violence in the Central African Republic (CAR), Jean, his wife, and their four surviving children are finally safe in a refugee camp near the northern edge of the Democratic Republic of Congo (DRC).

Jean, 38, recalls the day in March 2013 when he and his family first fled an attack on Bangui, their nation's capital. "My house was destroyed when the Sélékas arrived in Bangui," he says. "I was there. There were many abuses and they set fires. I fled for the first time into the forest with my family."

After one month in the forest, they returned to Bangui, where Jean rebuilt their home and prayed for a lasting peace. But a few months later, when anti-balaka fighters staged a counterattack on the city, they had to flee again. It was Christmas Day 2013.

"The fighting was very serious," he recalls. "The Sélékas came to my house. They took me to kill me. I cried. I told them that I was not a rebel. They wounded me with a crossbow. On 25 December, I realized that the problem was catastrophic."

After the Christmas Day attack, more than 10,000 refugees from CAR managed to cross the river into DRC – ordinarily a 10-minute voyage by boat.

Jean's family had a much harder time escaping. They were too far from the river and they could not reach it. Instead, they fled again to the forest,

eating leaves and roots for two months as they dodged repeated attacks. "The children lost a lot of weight," he says. "We were suffering . . . We had no help."

Jean led them to his grandfather's village, but it, too, came under attack. Finally, after months on the run, surviving on little sleep or food, they managed to cross into the DRC, over 400 kilometres upriver from Bangui.

"We took a pirogue," Jean says, a traditional wooden boat. "But we nearly had an accident because there were many children on board. We finally arrived in Congo in April 2014."

After 11 months in an informal settlement close to the border, UNHCR brought them to a newly-opened camp, some 50 kilometres from the border.

"I am very happy to be here," Jean says. "The six houses around my house are all my family. My mother stays in one with four grandchildren. My sister is in another one with two children. My brother is in one with one child, and my little brother is waiting for his wife and children, who are still in Bangui."

Many at the camp say they expect the fighting in Central African Republic to continue, but Jean is optimistic. Despite his ordeal, he says, "I hope to return to CAR, because it is my country. I am waiting for the right time to go back home."

Source: "[A long and perilous route to safety](#)," UNHCR, 2015

Chapter 1

The international legal framework protecting refugees



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1.1 Introduction

States are responsible for protecting the rights of their citizens. When governments are unable or unwilling to do this, people may face such serious threats that they are forced to leave their country and seek safety elsewhere. If this happens, another country has to step in to ensure that the refugees' basic rights are respected. This is known as "international protection".

The [1951 Convention relating to the Status of Refugees and its 1967 Protocol](#) are the core of the international protection system, complemented by regional treaties and declarations that also address the rights of refugees. But international refugee law does not operate in isolation. It is best understood in conjunction with international human rights law, starting with the 1948 [Universal Declaration of Human Rights](#), and with international humanitarian law (the law of war).

This broader international legal underpins the work of the Office of the United Nations High Commissioner for Refugees (UNHCR). The UN General Assembly created UNHCR after the Second World War to ensure the international protection of refugees, and to work with governments to find lasting solutions to refugee problems.

This chapter sets out the international legal framework for refugee protection as follows:

- The core instruments of international refugee law: the 1951 Convention and its 1967 Protocol;
- Regional refugee laws and standards as they relate to Africa, Latin America and Europe;
- Other relevant standards contained in international human rights law, international humanitarian law and international criminal law; and
- Further sources of law and guidance.

1.2 International refugee law and standards

1951 Convention relating to the Status of Refugees

The [1951 Convention relating to the Status of Refugees](#) is the foundation of international refugee law. It defines the term “refugee” (see box below: Who is a refugee under the 1951 Convention?), establishes the principle that refugees should not be forcibly returned to a territory where their lives or freedom would be threatened (see box below: The principle of *non-refoulement*), and sets out the duties of refugees and States’ responsibilities toward them.

The Convention was drawn up shortly after the Second World War, and its authors were focused on refugee problems existing at that time. The definition of a refugee contained in the 1951 Convention refers to persons who became refugees as a result of events occurring before 1 January 1951, and States had to declare whether they would apply that definition only to events that took place in Europe or also to events in other parts of the world. As new refugee crises emerged around the globe during the 1950s and early 1960s, it became clear that the temporal and geographical scope of the 1951 Convention needed to be widened. The 1967 Protocol to the Convention was adopted to do this.

1967 Protocol

The [1967 Protocol](#) is independent of, though integrally related to, the 1951 Convention. The Protocol removes the temporal and geographic limits found in the Convention. By acceding to the Protocol, States agree to apply the core content of the 1951 Convention (Articles 2–34) to all persons covered by the Protocol’s refugee definition, without limitations of time or place.

Most States have preferred to accede to both the Convention and the Protocol. In doing so, they reaffirm that *both* treaties are central to the international refugee protection system.

The 1951 Convention and 1967 Protocol are the modern embodiment of the age-old institution of asylum, Their strength remains their universal and non-discriminatory character and the fundamental values they reflect.

“ We reaffirm that the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol are the core international refugee law instruments and that they remain crucial for the protection of refugees.”

IPU, [Statement](#) on parliamentary action in support of UNHCR and refugee protection, IPU Governing Council, 188th session, Panama, 2011

“ We reaffirm the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto as the foundation of the international refugee protection regime. We recognize the importance of their full and effective application by States parties and the values they embody. ... We reaffirm respect for the institution of asylum and the right to seek asylum. We reaffirm also respect for and adherence to the fundamental principle of *non-refoulement* in accordance with international refugee law.”

UN General Assembly, New York [Declaration](#) for Refugees and Migrants, Resolution 71/1, 2016

Refugees and asylum-seekers: What is the difference?

A **refugee** is someone who has left his or her country of origin and is unable or unwilling to return there because of a serious threat to his or her life or freedom. The international legal definition of the term is contained in the 1951 Convention. (For more on the refugee definition see Chapter 6.4). Refugees are entitled to protection from forcible return to their country of origin (the principle of *non-refoulement*) and have other rights and duties that are set out in the 1951 Convention.

“**Asylum-seeker**” is a general designation for someone who is seeking international protection. In some countries it is a legal term referring to a person who has applied for refugee status and has not yet received a final decision on his or her claim. Not every asylum-seeker will ultimately be recognized as a refugee. However, an asylum-seeker should not

be sent back to his or her country of origin until the asylum claim has been examined in a fair procedure.

... and what about migrants?

It is equally important to distinguish correctly between the terms “migrant” and “refugee”. Conflating the two can have serious consequences for the lives and safety of refugees.

A **migrant** is best understood as someone who chooses to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons. Unlike refugees, migrants do not have a fear of persecution or serious harm in their home countries. Migrants continue to enjoy the protection of their own governments even when abroad and can return home.

The 1951 Convention and 1967 Protocol: What do they contain?

The 1951 Convention and 1967 Protocol cover three main subjects:

- The refugee definition, along with provisions for cessation of, and exclusion from, refugee status;
- The legal status (rights and obligations) of refugees in their country of asylum. This encompasses the duty of refugees to respect the laws and regulations of the country of asylum and their rights in that country, including to be protected from *refoulement*; and
- States' obligations, including to cooperate with UNHCR in the exercise of its functions and to facilitate its duty of supervising the application of the Convention.

Who is a refugee under the 1951 Convention?

According to the **1951 Convention**, a refugee is someone who:

- Has a well-founded fear of being persecuted because of his or her: Race; Religion; Nationality; Membership of a particular social group; or Political opinion.
- Is outside his or her country of origin or habitual residence;
- Is unable or unwilling to avail him- or herself of the protection of that country, or to return there, because of fear of persecution; and
- Is not explicitly excluded from refugee protection or whose refugee status has not ceased because of a change of circumstances.

A person is a refugee as soon as the criteria contained in this definition are fulfilled. In other words, a person does not *become* a refugee because of a positive decision on an application for protection. Recognition of refugee status is *declaratory*: it confirms that the person is indeed a refugee. While this may sound like a technicality, it is the reason why asylum-seekers should not be returned to their countries of origin until their claims have been examined.

Who is a refugee under the 1969 OAU Convention?

Adding to the refugee definition found in the 1951 Convention relating to the Status of Refugees, the **Organization of African Unity [OAU] 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa** incorporates a regional refugee definition also including:

- Any person compelled to leave his or her country "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality".

... and under the Cartagena Declaration?

Like the OAU Convention, the 1984 **Cartagena Declaration** adds a regional definition, complementing the 1951 Convention refugee definition to include:

- Persons who flee their countries "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

State practice

Obligation of *non-refoulement* under national law National constitutions and legislation give effect to the principle of *non-refoulement* in a myriad of ways. Some refer explicitly to refugees and asylum-seekers. Others refer more broadly to expulsion to a risk of torture, the death penalty, other inhuman or degrading treatment or punishment, or to treatment violating human dignity.

1.3 Regional refugee laws and standards

The 1951 Convention and 1967 Protocol were designed to assure refugees the widest possible enjoyment of their rights. In order to respond to regional specificities, States in different parts of the world have developed regional laws and standards that complement the international refugee protection regime.

1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa

The conflicts that accompanied the end of the colonial era in Africa produced a succession of large-scale refugee movements. These population displacements prompted the drafting and adoption not only of the 1967 Protocol, but also of the 1969 [Organization of African Unity \(OAU\) Convention Governing the Specific Aspects of Refugee Problems in Africa](#).

The 1969 OAU Convention confirms that the 1951 Convention is “the basic and universal instrument relating to the status of refugees”. It adopts the refugee definition found in the 1951 Convention, but also expands it to include any person compelled to leave his or her country because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality”.

This means that persons fleeing civil disturbances, widespread violence and war are entitled to refugee status in States that are parties to the African Convention, even if they do not have a well-founded fear of persecution for one of the reasons set out in the 1951 Convention. Of course, many people may be refugees under the terms of both Conventions. (See box below: Who is a refugee under the 1969 OAU Convention and under the Cartagena Declaration?)

The OAU Convention makes other important points. It affirms that “the grant of asylum to refugees is a peaceful and humanitarian act” that is not to be considered as an “unfriendly act” by any Member State of the OAU (now the African Union), and it requires States parties to take appropriate measure to lighten the burden of a State granting asylum “in a spirit of African solidarity and international cooperation”.

The principle of *non-refoulement*

Non-refoulement under the 1951 Convention

A refugee's right to be protected from forced return, or *refoulement*, is the cornerstone of international refugee protection. It is contained in Article 33(1) of the 1951 Convention, which states: "*No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*"

The words 'in any manner whatsoever' mean that the principle of *non-refoulement* applies to any conduct by the State that would place a refugee at risk of being returned, whether directly or indirectly, to his or her country of origin. This would include refusal of entry at the border as well as removal from within the territory. The principle of *non-refoulement* applies wherever the State exercises its authority, including beyond its borders, for example when intercepting ships on the high seas.

All refugees are entitled to protection from *refoulement* – including those who have not been formally recognized as such. This means that asylum-seekers whose status has not yet been determined by the authorities are protected from forced return.

Article 33(2) of the 1951 Convention outlines two exceptions to the principle of *non-refoulement*. It permits the *refoulement* of a refugee if there are reasonable grounds for regarding him or her as a danger to the security of the country where he or she is present or if, having been convicted of a particularly serious crime, the refugee constitutes a danger to the community. However, Article 33(2) does not release States from their obligations under international human rights law.

Non-refoulement under human rights law

The prohibition of *refoulement* in international refugee law is complemented by provisions in many international and regional human rights instruments that prohibit the removal of anyone, whether a refugee or not, to a risk of torture, or cruel, inhuman or degrading treatment or punishment. (See 1.4 Other international legal standards that protect asylum-seekers and refugees, below.)

Non-refoulement under customary law: An obligation for all States

It is widely accepted that the prohibition of *refoulement* is a customary law norm. Customary law is binding on all States. This means that even States that are not party to the 1951 Convention must respect the principle of *non-refoulement*.

1984 Cartagena Declaration

In 1984, a colloquium of government representatives and distinguished jurists was convened in Cartagena, Colombia, to discuss refugee protection in Latin America. Inspired by the 1969 OAU Convention, they adopted what is known as the [Cartagena Declaration on Refugees](#).

The Declaration reaffirms the centrality of the 1951 Convention and its 1967 Protocol, the principle of *non-refoulement*, as well the importance of international cooperation to solve refugee problems. It recommends that the definition of a refugee used throughout the region be enlarged beyond persons who fulfil the 1951 Convention definition to include those who have fled their country "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order". (See box above: Who is a refugee under the 1969 OAU Convention and under the Cartagena Declaration?)

Although the Declaration is not a legally binding instrument, most Central and South American countries apply its definition and many have incorporated it into their legislation. The Organization of American States (OAS), the UN General Assembly, and UNHCR's Executive Committee have all endorsed the Cartagena Declaration.

Since 1984, States in Central and Latin America have adopted three Declarations on the occasion of important anniversaries of the Cartagena Declaration, including most recently, the 2014 [Brazil Declaration and Plan of Action](#).

Regional practice

Incorporating the Cartagena Declaration refugee definition into national legislation in Latin American States. Although the Cartagena Declaration is non-binding, by mid-2016 the enlarged refugee definition it contains had been incorporated into national legislation in [14 States](#): **Argentina, Belize, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru** and **Uruguay**. Courts in **Costa Rica** and **Ecuador** respectively have ruled that the regional definition forms part of national ordinances and that it should be included in the national legal framework.

- ▶ [Guidelines on International Protection No. 12](#): Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, parts III and IV, UNHCR, 2016

The Middle East and Asia

There are no binding regional instruments addressing refugee law in the Middle East or Asia. In 1994, the [Arab Convention on Regulating Status of Refugees in the Arab Countries](#) was adopted by the League of Arab States (LAS), but it never entered into force. In October 2017 the League of Arab States adopted a new Arab Convention on refugees.

In 2001, Asian and African countries adopted the revised [Bangkok Principles on the status and treatment of refugees](#). Both the proposed Arab Convention and the Bangkok Principles use the refugee definition contained in the 1969 OAU Refugee Convention. The Arab Convention extends it further to persons fleeing disasters or other grave events disrupting public order.

In 2012, Member States of the Organization of Islamic Cooperation adopted the [Ashgabat Declaration](#) at a ministerial conference in Turkmenistan. The Declaration recognizes that "over fourteen centuries ago, Islam laid down the basis for granting refuge, which is now deeply ingrained in Islamic faith, heritage and tradition". The ministers also noted the "enduring value and relevance in the twenty-first century" of the 1951 Convention and 1967 Protocol and "the importance of respecting the principles and values that underlie these instruments".

These non-binding documents are important but have not achieved the same prominence and legal value as instruments in other regions.

Europe

The most far-reaching regional developments have come from the European Union (EU), which in 1999 decided to create a common European asylum system based on the “full and inclusive application of the Geneva Convention”. Since then, four key legislative instruments have been adopted in original and revised (or “recast”) versions. Each adds content to refugee law in an area not addressed by the 1951 Convention.

These instruments concern: (a) [temporary protection](#); (b) the [reception of asylum-seekers](#); (c) qualification for [refugee status or “subsidiary protection”](#) and the rights and status to which beneficiaries are entitled; and (d) [standards for asylum procedures](#). In addition, the “[Dublin III Regulation](#)” sets out the criteria for determining which EU Member State or other participating country is responsible for examining an asylum application. To provide operational support, two EU agencies were established: The European external borders agency [Frontex](#) in 2005 and the [European Asylum Support Office](#) (EASO) in 2010.

The [Charter of Fundamental Rights](#), adopted in 2007, has a status equal to that of the EU’s founding treaties. It includes provisions on the right to asylum and protection from removal, expulsion or extradition to a serious risk of being subject to the death penalty, torture or other inhuman or degrading treatment or punishment.

The Court of Justice of the European Union (CJEU) has jurisdiction to interpret these EU asylum instruments and to rule on any alleged infringements by Member States. Together with the European Court of Human Rights of the Council of Europe, which has addressed asylum issues in the context of the [European Convention on Human Rights and Fundamental Freedoms](#), these courts have significant influence on the wider development of international refugee law.

► Manual on the [Case Law of the European Regional Courts](#) relevant to refugees

1.4 Other international legal standards that protect asylum-seekers and refugees

As explained above, international refugee law consists of the 1951 Convention and its 1967 Protocol, and related regional instruments. But, international refugee law does not operate in isolation. It is complemented by other bodies of law, notably international human rights law, international humanitarian law, and international criminal law. There is no hierarchical relationship between these bodies of law, but they are interconnected.

International human rights law

Like all people, asylum-seekers and refugees are protected by international human rights law. This body of law extends to everyone within a State's territory or under its authority or jurisdiction. As the 1948 [Universal Declaration of Human Rights](#) affirms: "All human beings are born free and equal in dignity and rights."

Refugees and asylum-seekers are thus entitled to two partially overlapping sets of rights: those which States are obliged to respect, protect and fulfil under international human rights law, and the specific rights of refugees. (For more on how the UN human rights monitoring bodies work to protect asylum-seekers and refugees, see Chapter 8.)

Under international human rights law, some guarantees, such as the prohibitions of torture and slavery, cannot be restricted or suspended for any reason. Others may be derogated from under specific conditions, such as to uphold public order or health or protect the rights of others. Derogations must not be applied in a discriminatory manner, must be officially proclaimed and in accordance with the law.

The Convention against Torture and the Convention on the Rights of the Child are human rights instruments that provide important protections to asylum-seekers and refugees. Other human rights treaties also complement international refugee law in important ways, as described below.

UNHCR's Executive Committee recommends that States ...

" Within the framework of the respective child protection systems of States, utilize appropriate procedures for the determination of the child's best interests, which facilitate adequate child participation without discrimination, where the views of the child are given due weight in accordance with age and maturity, where decision makers with relevant areas of expertise are involved, and where there is a balancing of all relevant factors in order to assess the best option. "

UNHCR Executive Committee, [Conclusion No. 107](#) (LVIII), Children at Risk, 2007

The Convention against Torture: How it protects refugees

The [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) has a particularly significant place in international refugee law because:

- It defines and prohibits torture and other forms of ill-treatment that give rise to many refugees' applications for protection.
- It prohibits *refoulement*, or forced return, to situations where there are 'substantial grounds for believing' a person would be in danger of of torture.
- Its *non-refoulement* provision is not limited to people who have been formally recognized as refugees. It can therefore help individuals who missed a deadline to apply for recognition as a refugee, or who were the subject of an erroneous decision, or who are in countries where no individual procedures exist for the determination of refugee status.
- Unlike the provision in the 1951 Convention, the *non-refoulement* provision of the Convention against Torture is absolute. No limitation of or derogation from this provision is permissible.
- Under the Convention, a Committee against Torture has been established. Individuals may bring complaints to this Committee against a State party, subject to that State's recognition of the competence of the Committee to receive and consider individual communications.

(For more on the scope of *non-refoulement* obligation see Chapter 4.2)

The Convention on the Rights of the Child: How it protects refugees

Nearly every country in the world has ratified the [Convention on the Rights of the Child](#). This Convention applies to all children, including those who are refugees or asylum-seekers.

The Convention articulates four basic principles that underpin the treatment of all children:

- The principle of non-discrimination (Article 2)
- The principle of the best interests of the child (Article 3)
- The right to life and to survival and development (Article 6)
- The right to be heard (Article 12).

In addition, the Convention contains provisions that are of particular relevance to refugee children. It:

- Outlines a number of fundamental rights, including to protection from abuse, exploitation and neglect; to physical and intellectual development; and to education, adequate food and the highest attainable standard of health;
- Contains provisions concerning the child's right not to be separated from his or her parents against their will, except when this is in the child's best interests (Article 9); family reunification (Article 10); and the right to "special protection and assistance" by the State if the child is temporarily or permanently deprived of his or her family environment (Article 20).
- Specifically states that every child seeking refugee status or who is a refugee has a right to appropriate protection and humanitarian assistance in the enjoyment of the rights in the Convention (Article 22).

The principle of the best interests of the child

The Convention on the Rights of the Child states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." (Article 3(1))

This applies to all children without discrimination, including to children who are outside their country of origin.

The Committee on the Rights of the Child views this important principle as a three-fold concept:

- **A substantive right:** Every child is entitled to have his or her best interests assessed and taken into account as a primary consideration.
- **A legal principle:** Whenever a provision is open to more than one interpretation, the interpretation that most effectively serves the child's best interests should be chosen.
- **A rule of procedure:** Whenever a decision is made that will affect a specific child, a group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children.

Whenever **parliamentarians** consider legislation, review policies or allocate resources that affect children, they should make sure that children's best interests are a primary consideration.

Child and unaccompanied or separated child: What do these terms mean?

"A **child** means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." ([Convention on the Rights of the Child](#), Article 1)

A **separated child** is 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. Separated children may, therefore, include children who are accompanied by other adult family members. ([General Comment No. 6 \(2005\): Treatment of unaccompanied and separated children outside their country of origin](#), UN Committee on the Rights of the Child)

An **unaccompanied child** is one who is 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. ([General Comment No. 6 \(2005\): Treatment of unaccompanied and separated children outside their country of origin](#), UN Committee on the Rights of the Child).

- ▶ [General Comment No. 14 \(2013\)](#) on the right of the child to have his or her best interests taken as a primary consideration, UN Committee on the Rights of the Child, 2013
- ▶ [UNHCR Guidelines on determining the best interests of the child](#), UNHCR, 2008
- ▶ [Field handbook for the implementation of UNHCR BID guidelines](#), UNHCR, 2011
- ▶ [General comment No. 6 \(2005\): Treatment of unaccompanied and separated children outside their country of origin](#), UN Committee on the Rights of the Child, 2005
- ▶ [Inter-agency guiding principles on unaccompanied and separated children](#), 2004

How other human rights instruments protect refugees

The other main international human rights treaties, many of which have optional protocols that are relevant, play an important part in protecting refugees:

- The rights in the [International Covenant on Civil and Political Rights](#) are to be enjoyed on a non-discriminatory basis, and nearly all of its provisions apply to everyone within a State's territory or under its jurisdiction. It includes the right not to be subjected to torture, cruel, inhuman or degrading treatment, which has been interpreted to prohibit return to such treatment. Other civil and political rights include the right to life; the right to liberty and security of person; to liberty of movement within the State; to protection from expulsion, which shall only be undertaken pursuant to a decision reached in accordance with law; and to equal protection of the law.
- The [International Covenant on Economic, Social and Cultural Rights](#) establishes the principle of non-discrimination in the context of economic, social and cultural rights. It commits States to working progressively to realize rights to an adequate standard of living, to the highest attainable standard of physical and mental health, and to education, among others.
- The [Convention on the Elimination of All Forms of Racial Discrimination](#) contains detailed prohibitions of, and obligations to prevent, discrimination on grounds of race, colour, descent, or national or ethnic background. This can be particularly relevant for asylum-seekers and refugees who may be the targets of racial discrimination and xenophobia.
- The [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) requires States parties to refrain from discriminating against women in any way that directly or indirectly results in denying them equal enjoyment of their rights with men. Moreover, aggravated or cumulative forms of discrimination against women may amount to persecution in the sense of the 1951 Convention.
- The [Convention on the Rights of Persons with Disabilities](#) specifically requires States parties to ensure the protection and safety of persons with disabilities in situations of risk, including during armed conflict and humanitarian emergencies.
- The [International Convention for the Protection of All Persons from Enforced Disappearance](#) requires States parties to make enforced disappearance a criminal offence and bring those responsible for it to justice. The Convention protects individuals from extradition if there are substantial grounds for believing that extradition has been requested with the aim of prosecuting a person on account of their sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or if compliance with the request would cause harm to that person for any of those reasons. It also protects people from being forcibly returned to a State where there are substantial grounds for believing they would be at risk of enforced disappearance.

Regional human rights instruments relevant to refugee protection

Numerous regional instruments are relevant to refugee protection. Some of the most important are listed below.

In Africa, regional human rights instruments that are relevant to the protection of refugees include the [African Charter on Human and Peoples' Rights](#); its [Protocol on the Rights of Women in Africa](#); the [African Charter on the Rights and Welfare of the Child](#); and the [Great Lakes Protocol on Property Rights of Returning Persons](#).

In the Americas, relevant human rights instruments include the [American Declaration on the Rights and Duties of Man](#); [American Convention on Human Rights](#); its [Additional Protocol in the Area of Economic, Social and Cultural Rights](#); the Inter-American [Conventions on the Forced Disappearance of Persons](#); to [Prevent and Punish Torture](#); on the [Prevention, Punishment and Eradication of Violence against Women](#); and on the [Elimination of All Forms of Discrimination against Persons with Disabilities](#).

In Asia, the South-Asian Association for Regional Cooperation (SAARC) has agreed a [Social Charter](#), as well as a [Convention on Regional Arrangements for the Promotion of Child Welfare](#) in South Asia. The Association of Southeast Asian Nations (ASEAN) issued the [ASEAN Human Rights Declaration](#) in 2012.

In Europe, relevant Council of Europe instruments include the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) and its Protocols, notably Nos. [1](#), [4](#), [7](#), and [12](#); the [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#); the [Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#); the [Convention on Preventing and Combating Violence against Women and Domestic Violence](#); and the [European Social Charter \(revised\)](#). In the EU, there are the various Directives and Regulations that underpin the common European asylum system, as well as the [Charter of Fundamental Rights and Freedoms](#). (See Chapter 1.3 Regional refugee laws and standards above.)

In the Middle East and North Africa, regional human rights instruments relevant to refugee protection include the [Arab Charter on Human Rights](#), as well as the Organization of the Islamic Conference (OIC) [Rabat Declaration on Child's Issues in OIC Member States](#); the OIC [Covenant on the Rights of the Child in Islam](#); and the OIC [Cairo Declaration on Human Rights in Islam](#).

The right to seek and enjoy asylum

The concept of asylum or sanctuary is accepted in all regions of the world. It can be traced back to ancient traditions of hospitality, to philosophical teachings and religious texts. The concept is also recognized in numerous human rights instruments, notably in Article 14(1) of the [Universal Declaration of Human Rights](#), which establishes that “Everyone has the right to seek and enjoy asylum from persecution.”

The legal framework established by the 1951 Convention and 1967 Protocol derives directly from the right to seek and enjoy asylum affirmed in the Universal Declaration.

“ The institution of asylum, which derives directly from the right to seek and enjoy asylum from persecution set out in Article 14 of the Declaration, is among the most basic mechanisms for the protection of refugees.”

[UNHCR Executive Committee, Conclusion No. 85 \(XLIX\), 1998](#)

The right to seek and enjoy asylum: What is involved?

The word “asylum” is not defined in international law, but has become an umbrella term for the protection a country provides to refugees on its territory. The principle of *non-refoulement* is central to the right to seek and enjoy asylum, but asylum is more than just the prevention of *refoulement*. It is a process that starts with the admission of someone to safety and concludes when the refugee becomes a citizen of his or her new country, or is able to return voluntarily, in safety and dignity, to his or her country of origin, or gain admission to and a durable solution in another country.

The right to seek and enjoy asylum thus includes:

- Respect for the principle of *non-refoulement*, including non-rejection at the frontier;
- The admission of asylum-seekers and refugees to the territories of States;
- Asylum-seekers’ access to fair and effective processes for determining their status and protection needs;
- Asylum-seekers’ and refugees’ rapid, unimpeded, and safe access to UNHCR;
- The treatment of asylum-seekers and refugees in accordance with applicable human rights and refugee law standards;
- Host States’ responsibility for safeguarding the civilian, peaceful, and humanitarian nature of asylum; and
- Refugees’ and asylum-seekers’ duty to respect and abide by the laws of host States.

State practice

The right to seek and enjoy asylum in national constitutions: Many States recognize a right to seek and enjoy asylum in their constitutions, but do this in different ways:

- Some constitutions recognize a right to seek and enjoy asylum in a way that confers a right on an individual, such as in [Angola](#), [Bosnia and Herzegovina](#), [Croatia](#), [Germany](#), [Guinea](#), [Indonesia](#), [Mali](#), [Montenegro](#), [Paraguay](#), [Portugal](#), [Serbia](#), [Somalia](#), [Venezuela](#), and the [Federal Republic of Yugoslavia](#).
- Alternatively, the relevant provision may be phrased as an obligation on the State, as in [Azerbaijan](#), [Bulgaria](#), [Democratic Republic of Congo](#), [Czech Republic](#), [Georgia](#), [Hungary](#), the [former Yugoslav Republic of Macedonia](#), [Namibia](#), the [Russian Federation](#), and [Turkmenistan](#).
- Some constitutions recognize the right to seek and enjoy asylum but make it subject to “laws and regulations in force”, or similar wording, which might be interpreted as giving the legislature discretion to determine the content of the right. Such States include [Afghanistan](#), [Albania](#), [Burkina Faso](#), [Burundi](#), [Cape Verde](#), [Colombia](#), [Republic of Congo](#), [East Timor](#), [Equatorial Guinea](#), [El Salvador](#), [Iraq](#), [Italy](#), [Mexico](#), [Moldova](#), [Mozambique](#), [Poland](#), [Portugal](#), [Romania](#), [Rwanda](#), [Slovak Republic](#), [Slovenia](#), [Spain](#), [Timor Leste](#), [Tunisia](#), and [Ukraine](#).
- Some constitutions do not explicitly incorporate a right to seek and enjoy asylum but do so indirectly by declaring, as in [Andorra](#) and [Togo](#), that the Universal Declaration of Human Rights is applicable, or by referring to regional human rights obligations, as in [Benin](#).

Some constitutions set out the a right to seek and enjoy asylum in more detail. For instance:

- A number of constitutions define this right using language from the refugee definition contained in the 1951 Convention, for instance those of the [Democratic Republic of Congo](#), [Guinea](#), [Hungary](#), [Mali](#), [Montenegro](#), [Namibia](#), [Serbia](#), and [Turkmenistan](#).
- Others refer to a right to seek and enjoy asylum in relation to persons facing persecution because of their actions in defence of democracy, national liberation, human rights and/or fundamental freedoms. Such States include: [Bulgaria](#), [Cape Verde](#), [Cuba](#), the [People's Democratic Republic of Korea](#), [Laos](#), [Mongolia](#), [Mozambique](#), [Portugal](#), the [Republic of Slovakia](#), [Slovenia](#), [Timor Leste](#), [Viet Nam](#), and the [Federal Republic of Yugoslavia](#).
- Some constitutions state more generally that asylum is to be granted in accordance with international rules and treaties, thus including obligations under the 1951 Convention and international customary law standards. Examples include the constitutions of [Angola](#), [Azerbaijan](#), [Equatorial Guinea](#), [Georgia](#), [Italy](#), the [former Yugoslav Republic of Macedonia](#), [Moldova](#), [Poland](#), [Romania](#), and the [Russian Federation](#).
- Finally, some constitutions refer to the State's sovereign right to grant "political asylum" or "diplomatic asylum," often on a discretionary basis without regard to the eligibility criteria under international refugee law. Such political or diplomatic asylum may exist alongside asylum involving the recognition of refugee status and the rights and benefits attached to it under the 1951 Convention and other relevant instruments.

Whether constitutions or indeed national legislation refer to an individual right to seek and enjoy asylum or to a corresponding obligation of the State, it is helpful to provide a clear legal basis for asylum. Language can mirror the refugee definition contained the 1951 Convention and applicable regional instruments, or a reference can be made to the right to seek and enjoy asylum being on the basis of international legal obligations. This helps to make clear the humanitarian and non-political character of the right to seek and enjoy asylum.

International humanitarian law

International humanitarian law, also known as the laws of war or of armed conflict, is a complex field that predates human rights and refugee law. It seeks to limit the means and methods of warfare and the effects of armed conflict on persons who are not or who are no longer participating in it. A major part of international humanitarian law is contained in the four [Geneva Conventions of 1949 and two Additional Protocols](#) agreed in 1977.

According to international humanitarian law, persons who do not take part in the fighting, whether they have been displaced or not, should be respected, protected against the effects of war, and provided with impartial assistance. Since many refugees and displaced persons find themselves in the midst of international or internal armed conflict, its principles can also help protect them.

Checklist for parliamentarians:

The right to seek and enjoy asylum

To ensure respect for the right to seek and enjoy asylum in national legal frameworks, parliamentarians are encouraged to:

- ✔ In line with the right to seek and enjoy asylum affirmed in the [Universal Declaration of Human Rights](#), ensure that this right is given effect at the national level by acceding to the 1951 Convention and approving national legislation implementing the provisions of the Convention.
- ✔ Where there is a regionally recognized right to seek and enjoy asylum ([African Charter on Human and Peoples' Rights](#), Article 12(3); [American Convention on Human Rights](#), Article 22(7); the [American Declaration on the Rights and Duties of Man](#), Article XXVII; [Charter of Fundamental Rights of the European Union](#), Article 18), ensure that this is protected by the constitution or otherwise reflected in national legislation.
- ✔ Distinguish clearly in legislation between refugee status and other forms of asylum, such as diplomatic asylum in Latin America or the discretionary power conferred in some countries on the Head of State to grant asylum on political grounds.

prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” in the definitions of crimes against humanity and war crimes. Similarly, judgements of the **International Tribunals for the former Yugoslavia and for Rwanda** have confirmed that enslavement, rape, torture, and genocide are crimes against humanity. The Rome Statute is thus relevant to determining what are the criminal acts that could lead to someone being excluded from refugee status.

- ▶ [Expert meeting on complementarities between international refugee law, international criminal law and international human rights law: Summary conclusions](#), UNHCR, 2011

International humanitarian law is binding on all parties to a conflict, both government forces and non-state armed groups. The most serious violations of international humanitarian law are regarded as war crimes. Under Article 1F of the 1951 Convention, persons with respect to whom there are serious reasons for considering that they have committed “war crimes” must be excluded from refugee status. (See chapter 6.6 on exclusion from refugee status.) Both international humanitarian law and international criminal law are relevant to this determination.

- ▶ For more information, see [International Humanitarian Law Handbook for Parliamentarians](#), ICRC and the IPU, 2016.

International criminal law

International criminal law is designed to prohibit particularly egregious conduct. The [Rome Statute of the International Criminal Court](#), in force since 2002, provides that the International Criminal Court (ICC) has jurisdiction over the core crimes of genocide, war crimes and crimes against humanity, and contains details about what these crimes consist of.

For example, the Statute explicitly includes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence

Protecting refugees: What parliamentarians can do

Members of parliament can play a crucial role in ensuring that refugees are protected in law and in practice. The following steps are important:

Incorporate the principle of *non-refoulement*

- The principle of *non-refoulement* should be incorporated into relevant national legislation. To do so, laws concerning border control and the entry of foreigners will need to reflect the difference between persons who are seeking asylum or who may otherwise need international protection and those who want to enter the country for other reasons. (See also Chapter 4.2)
- Asylum-seekers need to have access to a fair and efficient procedure in which to present their claims for protection. Such procedures are essential for States to uphold their obligation of *non-refoulement*. (See also Chapter 7.)

Accede to international treaties

- The government should be encouraged to accede to the 1951 Convention and 1967 Protocol, if it has not already done so. (See also Chapter 3.2).
- The government should also be encouraged to accede to international human rights instruments relevant to refugee protection, particularly the Convention against Torture and the Convention on the Rights of the Child, and to international humanitarian law treaties, if it has not already done so.
- At the regional level, parliaments in African countries that have not acceded to the 1969 OAU Convention should consider accession. Regional human rights treaties in Africa, Europe and the Americas also contain standards relevant to refugee protection. Countries in those regions should consider acceding to these instruments, if they have not already done so.

Review reservations and restrictive interpretations

- Where States maintain reservations to the 1951 Convention and 1967 Protocol, the continued necessity of these reservations should be reviewed, as well as any restrictive interpretations of these instruments reflected in national legislation, with a view to removing these restrictions.
- Members of parliament may put questions to the government about Treaty reservations or call for policies or legislation to be reviewed by parliamentary committees, or even introduce a private member's bill on this matter.

Implement international standards when establishing State asylum systems

- When State systems for protecting refugees are being elaborated, parliamentarians and government officials can draw inspiration from a significant body of international standards – including the Conclusions adopted by UNHCR's Executive Committee and UNHCR guidance as well as international and regional Treaties.
- The adoption of refugee legislation based on international standards is key to strengthening asylum systems, making protection more effective, harmonizing the protection provided in different States, and providing a basis for seeking solutions for refugees. International legal standards are especially helpful when developing law and policy on matters on which the 1951 Convention is silent, such as procedures for determining refugee status. (See generally Chapter 3 on building State asylum systems, as well as Chapters 6 and 7 on asylum procedures.)

Broaden the refugee criteria

- Parliaments may wish to consider incorporating an expanded refugee definition in national law, such as that found in the 1969 OAU Convention and the Cartagena Declaration.
- Parliamentarians are encouraged to seek to ensure that people who may not be refugees but who are nevertheless in need of international protection are able to receive a complementary form of protection (see also Chapter 6.7).

1.5 Other sources of law and guidance

UN General Assembly Resolutions and Declarations

Every year, the General Assembly considers a report on UNHCR's work and adopts a resolution on this subject. It has also adopted numerous resolutions on specific aspects of refugee protection, such as unaccompanied refugee minors, human rights and mass exoduses, and the situation of specific countries receiving large flows of refugees.

In September 2016, the General Assembly adopted the [New York Declaration for Refugees and Migrants](#) and launched intergovernmental negotiations to reach a "global compact for safe, orderly and regular migration". Like the Universal Declaration of Human Rights adopted in 1948, the New York Declaration is a political document. It puts refugees at the centre of political attention and encourages a broad, whole-of-society approach to refugee protection.

UNHCR Executive Committee Conclusions

The Executive Committee (often known as ExCom) is UNHCR's governing body (see also Chapter 2.4). It meets in plenary session once each year to discuss UNHCR's work and adopts Conclusions by consensus. These Conclusions represent the agreement of nearly 100 countries over many decades, and form an essential part of the international refugee protection framework.

Governments, ministries and parliamentarians often consult Executive Committee Conclusions when developing laws and policies. In addition, national and regional courts regularly refer to and rely on them as "soft law" instruments that are persuasive and even authoritative sources on matters of policy, legal practice and interpretation.

Executive Committee Conclusions thus represent collective international positions, including legal expertise, on refugee matters. They help advance common understandings and to set standards in many areas of refugee protection and solutions, and are one way in which the international protection regime is further developed.

UNHCR Guidance

UNHCR itself issues guidance on international refugee law. Amongst the most authoritative is its [Handbook on procedures and criteria for determining refugee status](#) (1979, reissued 2011). Many national asylum authorities use this Handbook to guide their decision-making, and it is regularly quoted by courts around the world.

UNHCR also issues [Guidelines on International Protection](#) to complement the *Handbook*. These Guidelines provide more detailed, contemporary guidance on the interpretation of provisions of the 1951 Convention/1967 Protocol and other international protection matters. They can be helpful to parliamentarians reviewing national legislation and practice.

► UNHCR's legal and policy guidance is available in UNHCR's [Protection Manual](#).

Chapter 2

Roles and responsibilities for protecting refugees



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2.1 Introduction

Both States and UNHCR have a part to play in protecting refugees. For States, refugee protection is both an individual and a collective responsibility. UNHCR's Executive Committee has stressed that "respect for human rights and humanitarian principles is a responsibility for all members of the international community" ([Conclusion No. 100 \(LV\)](#) 2004). [The New York Declaration for Refugees and Migrants](#), adopted by the UN General Assembly in 2016, affirms that responding to large flows of refugees is a "shared responsibility" of States.

UNHCR's mandate is to provide international protection to refugees and to seek solutions for refugee problems. It can only carry out this mandate with the cooperation of States.

This chapter examines:

- The roles and responsibilities of States for protecting refugees;
- States' responsibilities towards particular categories of refugees and asylum-seekers, including children, women and girls, and persons with disabilities; and
- The mandate of UNHCR, including its supervisory role, its governance, funding, and partnerships with UN agencies and others.

2.2 The roles and responsibilities of States

State responsibility starts with addressing root causes of forced displacement. Strengthening the rule of law and providing citizens with security, justice, and equal opportunities are crucial to breaking the cycles of violence, abuse and discrimination that can lead to displacement.

When countries accede to the 1951 Convention or 1967 Protocol, they agree to protect refugees on their territory and under their jurisdiction, in accordance with the terms of these instruments. States have also agreed to extend relevant rights to refugees in accordance with international human rights obligations. Even States that are not party to the Convention or Protocol are bound by the principle of *non-refoulement*, which is considered a norm of customary international law and as such is binding on all States.

The various branches of government, whether the executive, legislature, or the judiciary have complementary roles and responsibilities for establishing and maintaining State asylum systems based on the rule of law, and for providing protection and durable solutions to refugees. These responsibilities are not limited to the central government; regional and local authorities also play an important part.

The importance of international cooperation and solidarity

“ ... [T]he refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and responsibility and burden sharing among all States”

(Executive Committee [Conclusion No. 100](#) (LV) 2004).

International cooperation is particularly important when countries, especially developing countries, are called upon to host large numbers of refugees for long periods of time, without necessarily having sufficient resources. Mass influxes and protracted refugee situations place a tremendous strain on host countries. Other countries can make an important contribution by providing financial and technical assistance, and by participating in refugee resettlement programmes.

“ The Executive Committee calls upon States and all other relevant actors to commit themselves, in the spirit of international solidarity and burden-sharing, to comprehensive, multilateral and multi-sectoral collaboration and action, in addressing the root causes of protracted refugee situations, in ensuring that people are not compelled to flee their countries of origin in the first place, to find safety elsewhere, and in resolving the protracted refugee situations which persist, in full respect for the rights of affected persons.”

UNHCR Executive Committee, [Conclusion No. 112](#) (LXVII) on international cooperation from a protection and solutions perspective, 2016

The role of executive and administrative bodies

To provide a framework for refugee protection, a national asylum system is needed. This requires a decision by the competent national authorities, and political commitment, preferably at the highest level. Relevant ministries and their staff should be fully engaged. Depending on their specific roles, they need to:

- Understand key concepts and legal principles;
- Be able to gather and assess relevant data;
- Review existing national legislation that may apply or be affected;
- Decide what new legislative and policy measures are needed;
- Decide what institutions need to be established;
- Decide whether to request technical support from the international community in setting up the refugee protection framework;
- Ensure implementation of measures introduced; and
- Monitor implementation over time, to ensure effectiveness and fairness of measures adopted.

National parliaments

National parliaments have a central part to play in the creation and maintenance of a national legal framework for protecting refugees. Parliamentarians are responsible for reviewing policy documents and preparing and approving legislation that is in line with international standards. They also appropriate funding for government departments and agencies, and can help to encourage a positive response to refugees from citizens.

In countries that have not yet acceded to the 1951 Convention or 1967 Protocol, parliamentarians can promote and support accession. The **Inter-Parliamentary Union** has regularly reaffirmed that the 1951 Convention and 1967 Protocol are central to securing refugee protection and has called on States that have not yet acceded to these instruments to do so.

The crucial role of parliamentarians

- Parliamentarians are opinion-leaders who can promote respect for refugees among their constituents and encourage informed and balanced debate on refugee questions.
- Parliamentarians oversee national budget appropriations, and can ensure that adequate and cost-effective funding is provided both to national refugee protection systems and to UNHCR, as the international agency mandated to protect refugees and promote durable solutions to their problems.
- Parliamentarians can encourage accession to the 1951 Convention and its 1967 Protocol, and to other relevant international and regional agreements. They can design and adopt national legislation and promote State asylum systems that conform to international standards, and oversee their implementation.

Regional parliaments

Regional parliaments are also involved in refugee protection. In Europe, for instance, both the Parliamentary Assembly of the Council of Europe and the European Parliament (the directly elected legislative body of the European Union) are active on refugee issues, and both groups are Associate Members of the Inter-Parliamentary Union.

- The Parliamentary Assembly has developed guidance on numerous issues that relate to refugee protection, such as alternatives to detention, managing mixed migratory flows, tackling intolerance, the right to work for asylum-seekers and standards to apply in the context of return measures. The Parliamentary Assembly also monitors and reports on the situation of asylum-seekers and refugees in the 47 Member States of the Council of Europe.
- The European Parliament is involved in the drafting and approval of European Union law agreed as part of the common European asylum system. Beyond its legislative role, several Parliamentary committees, especially the Committee on Civil Liberties, Justice and Home Affairs, are engaged in a wide range of other refugee-related matters.

“ We recognize that more needs to be done to address the plight of refugees, returnees, internally displaced persons and stateless people. We pledge to do our part, as members of parliament. ... We pledge to strengthen the implementation of these instruments [the 1951 Convention and 1967 Protocol]. ”

Inter-Parliamentary Union, [Statement to mark the 60th anniversary of the adoption of the 1951 Convention](#), 2011

The judiciary

At the national level, judges have a vital role in refugee protection. Their decisions contribute to the consistent and sound interpretation and application of relevant standards and can help to bridge protection deficits in contexts where political, administrative and legislative processes may be weak.

Regional courts and bodies also support the interpretation and enforcement of legal standards for the protection of asylum-seekers and refugees, in particular in Europe and Latin America. The European Court of Human Rights, the Court of Justice of the EU and the Inter-American Commission and Court of Human Rights are examples of regional judicial bodies that have issued leading judgements interpreting regional instruments that protect asylum-seekers and refugees.

In addition, the non-governmental **International Association of Refugee Law Judges (IARLJ)** helps foster understanding among the judiciary of the obligations created by the 1951 Convention and other relevant instruments. It provides a forum for exchanging information, sharing best practices and developing consistent approaches to the interpretation and application of refugee law. The IARLJ encourages the use of the judicial process to adjudicate the rights of asylum-seekers and refugees, and helps develop understanding of judicial independence in the context of refugee law, especially in emerging democracies and developing countries.

National human rights bodies and ombudspersons

National human rights institutions (NHRIs) exist in more than 100 countries. While operating independently from the State, they make important contributions to protecting and monitoring respect for the rights of asylum-seekers and refugees. NHRIs may be human rights commissions or ombudspersons.

In addition to NHRIs with general human rights mandates, some countries have commissions or ombudspersons with more specialized mandates that are especially relevant to asylum-seekers and refugees. These include NHRIs working on issues such as discrimination or detention, or the rights of minorities, children and women, or persons with disabilities.

NHRIs investigate complaints and seek to resolve them, usually through recommendations or mediation. They can also identify and work to remedy systemic issues that cause breaches of people's rights, including those of asylum-seekers and refugees.

- ▶ OHCHR and NHRIs <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>
- ▶ [Belgrade principles on the relationship between national human rights institutions and parliaments](#), UN Human Rights Council, 2012

2.3 Responsibilities towards particular categories of refugees

States have responsibilities towards asylum-seekers and refugees generally. They have additional responsibilities towards certain asylum-seekers and refugees on account of their age, sex, disability and/or other factors. Initiatives to secure the protection of refugees and asylum-seekers need to take full account of the diversity of this population.

UNHCR's Executive Committee has recognized that some asylum-seekers and refugees are particularly at risk. Drawing on international human rights standards, it has adopted three Conclusions that provide the framework for a holistic approach to the needs of the following, potentially overlapping, categories:

- Children;
- Women and girls;
- Persons with disabilities; and
- Other persons with specific needs.

Responsibilities towards children at risk

Executive Committee Conclusion No. 107 outlines the fundamentals of child protection and the importance of a systematic approach to the identification of children at risk. It recommends measures to prevent and respond to situations of heightened risk and to find solutions for the affected children. These measures include:

- Establishing and implementing procedures to determine children's best interests;
- Ensuring that children can enjoy their rights without discrimination;
- Developing child and gender-sensitive asylum systems;
- Ensuring that birth registration and documentation are provided for all children;
- Putting in place procedures to prevent the separation of children from their families, and to facilitate tracing and family reunification for those who have become separated;
- Providing and monitoring alternative care and accommodation arrangements for unaccompanied and separated children;
- Ensuring a secure environment for children; and
- Supporting durable solutions for children.

Responsibilities towards women and girls at risk

UNHCR's Executive Committee Conclusion No. 105 on women and girls at risk acknowledges the complex challenges involved in protecting displaced women and girls. The Conclusion recommends measures to identify at-risk women and girls, to mitigate the risks they face, and to develop individual responses and solutions. The availability of data that is disaggregated by sex and age is important throughout these processes, as is the provision of individual documentation to refugee women and to unaccompanied or separated girls.

Recommended **identification** strategies include the timely registration of refugees on an individual and ongoing basis, including registration of births, marriages and divorces; working with the community to identify protection problems; and monitoring access to and enjoyment of services by women and girls.

Risk mitigation requires **establishing and strengthening secure environments** for refugees. This encompasses efforts to maintain the civilian and humanitarian character of asylum; to prevent sexual and gender-based violence (SGBV), protect victims, and bring perpetrators of violence against women and girls to justice; and to strengthen dispute resolution capacity within the displaced community.

Measures to enhance the **empowerment** of displaced women and girls include promoting women's leadership; strengthening women's and girls' capacities, including by enabling their access to quality education, and by enhancing their food security, livelihood opportunities, freedom of movement and economic independence.

Recommended actions for **individual responses and solutions** include establishing mechanisms to identify individual women and girls at risk, determine and implement appropriate immediate responses and subsequent solutions; monitoring of initiatives taken; helping women and girls at risk to have access to justice; expanding resettlement of refugee women and girls at risk; and ensuring that support, such as medical and psychosocial care, is available to them, whether in the context of local integration, return, resettlement or other humanitarian programmes.

Children

Just over half of the world's refugees are children. In some refugee situations, the proportion of children is even larger. Because of their age, social status and physical and mental development, children are even more vulnerable than adults in situations of forced displacement.

Recognizing this, in 2007 UNHCR's Executive Committee adopted [Conclusion No. 107 on children at risk](#). This Conclusion provides very detailed operational guidance on the protection of children who are at heightened risk.

- ▶ [Conclusion No. 107 \(LVIII\) on children at risk](#), UNHCR Executive Committee, 2007
- ▶ [Conclusion No. 113 \(LXVII\) on youth](#), UNHCR Executive Committee, 2016

Women and girls

Asylum-seeking and refugee women and girls are often exposed to particular risks related to their gender, their cultural and socio-economic position, and their legal status. This means that they may be even less likely than men and boys to be able to exercise their rights. Targeted action in favour of refugee women and girls may therefore be necessary to make sure that they are protected and assisted on an equal basis with men and boys.

With this in mind, in 2006 UNHCR's Executive Committee adopted [Conclusion No. 105 on women and girls at risk](#).

“ The UN General Assembly: “ Reaffirms that States have an obligation to exercise due diligence to prevent and combat all forms of violence against women and girls, provide protection to the victims and investigate, prosecute and punish the perpetrators of violence against women and girls, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.”

UNGA Resolution 69/151, Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the 23rd special session of the General Assembly, 2014

- ▶ [Conclusion No. 105 \(LVII\) on women and girls at risk](#), UNHCR Executive Committee, 2006
- ▶ [UNHCR Handbook for the protection of women and girls](#), UNHCR, 2008
- ▶ [General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women](#), UN Committee on the Elimination of Discrimination Against Women (CEDAW), 2014

Refugee story:

Empowering women refugees in Mauritania

Budiaki, 32, helps students to connect with their families online during one of the basic computer skills training sessions that she runs at a Women's Centre for urban refugees in Nouakchott, Mauritania.

Originally from the Democratic Republic of the Congo, Budiaki has been displaced by conflict multiple times in her life. "I was at school when [a group of armed men] came," she recalls. "I rushed back home to my uncle's place, only to find out that the house had already been taken by the soldiers."

Today, she is a qualified trainer who runs classes three times a week and acts as a representative for refugee women living in Nouakchott. "I know what it feels like when you don't know where your relatives are, and how important it is to communicate with them," she explains. "That's why I chose to be an information trainer and help more people find their families."

[Empowering women refugees: To mark International Women's Day, UNHCR pays tribute to the strength and resilience of displaced women around the world](#), UNHCR, 2016

Refugees with disabilities

The specific needs of refugees with disabilities are often overlooked, especially in the early phases of humanitarian emergencies. Persons with disabilities may be exposed to discrimination, exploitation, and sexual and gender-based violence (SGBV). They may be excluded from support services, or have difficulties accessing these services. Children with disabilities may be excluded from education, and both children and older persons with disabilities face greater risk of abuse, neglect, abandonment, exploitation, health problems and family separation.

The Executive Committee's [Conclusion No. 110 on refugees with disabilities](#), adopted in 2010, looks at these challenges in more detail.

- ▶ [Conclusion No. 110 \(LXI\) on refugees with disabilities and other persons of concern with disabilities protected and assisted by UNHCR](#), UNHCR Executive Committee, 2010
- ▶ [Working with persons with disabilities in forced displacement](#), UNHCR, 2011

Other persons with specific needs

There are other asylum-seekers and refugees who may require targeted responses because of their specific needs. This could include older persons; survivors of torture or SGBV; traumatized persons; victims of trafficking; people who are lesbian, gay, bisexual, transgender or intersex (LGBTI); and members of national, ethnic, religious or linguistic minorities in a given population or situation.

- ▶ [Working with national or ethnic, religious and linguistic minorities and indigenous peoples in forced displacement](#), UNHCR, 2011
- ▶ [Working with lesbian, gay, bisexual, transgender and intersex persons in forced displacement](#), UNHCR, 2011

- ▶ [Protecting persons with diverse sexual orientations and gender identities](#), UNHCR, 2015
- ▶ [Working with men and boy survivors of sexual and gender-based violence in forced displacement](#), UNHCR, 2012
- ▶ [Working with older persons in forced displacement](#), UNHCR, 2013

2.4 The role of UNHCR

UNHCR's origins and mandate

UNHCR is a subsidiary organ of the United Nations General Assembly. It was established as of January 1, 1951 to provide international protection to refugees and, together with governments, to seek solutions to their plight. As the problem of displacement has grown in size and in complexity, UNHCR has grown and adapted to meet the challenge.

The legal foundation for UNHCR's work is its [Statute](#). It stipulates that the work of UNHCR shall be entirely non-political, humanitarian and social in character. The Statute was adopted by the UN General Assembly in 1950 and sets out the High Commissioner's functions. These include promoting the conclusion and ratification by States of international conventions for the protection of refugees (such as the 1951 Convention and its 1967 Protocol), as well as the execution of measures, including those introduced by States, to improve the situation of refugees and to reduce their number. The Statute also mandates UNHCR to encourage States to admit refugees to their territory, and to obtain information from Governments concerning

Responsibilities towards persons with disabilities

UNHCR's Executive Committee Conclusion No. 110 on Refugees with Disabilities calls on States and UNHCR, in cooperation with relevant partners, to protect and assist refugees with disabilities against all forms of discrimination and to provide sustainable and appropriate support to address their needs.

Recommended measures include:

- Ensuring swift and systematic identification and registration of refugees with disabilities so as to be able to assess their protection and assistance needs;
- Including refugees with disabilities in relevant policies and programmes and providing access to services;
- Communicating information, procedures, decisions and policies to refugees with disabilities;
- Enabling children and youth with disabilities to access appropriate protection, assistance and education;
- Ensuring the inclusion of refugee women and girls with disabilities in programmes to prevent and respond to SGBV and other forms of exploitation; and
- Ensuring that refugees with disabilities have equality of opportunity for durable solutions and are provided appropriate support.

The Conclusion reaffirms the importance of international cooperation for improving the living conditions of refugees with disabilities, particularly in developing countries, through the timely availability of adequate humanitarian and development funding and other resources.

the number and condition of refugees, and States' laws and regulations regarding refugees.

Over the years, the UN General Assembly and the UN Economic and Social Committee (ECOSOC) have expanded UNHCR's responsibilities to include functions and groups that were not covered by the original Statute. This expansion relates to refugees who have returned home voluntarily (returnees), to stateless people, and to internally displaced persons. UNHCR's mandate is thus significantly broader today than when it was first established.

UNHCR has grown from a small, specialized agency to an organization of some 10,000 employees with offices in over 120 countries. Until 2003, its mandate had to be renewed every three years by the General Assembly. In 2003, the General Assembly extended UNHCR's mandate "until the refugee problem is solved".

- ▶ [UNHCR's mandate in relation to assistance to refugees and other people of concern](#), UNHCR, 2015
- ▶ [Note on the mandate of the High Commissioner for Refugees and his Office](#), UNHCR, 2013

Further information on stateless persons and IDPs can be found in:

- ▶ [Nationality and statelessness](#), Handbook for Parliamentarians No. 22, IPU and UNHCR, 2014
- ▶ [Handbook on protection of stateless persons](#), UNHCR, 2014
- ▶ [Internal displacement: Responsibility and action](#), Handbook for Parliamentarians No. 20, IPU and UNHCR, 2013
- ▶ [Handbook for the protection of internally displaced persons](#), Global Protection Cluster, 2010

UNHCR's role in providing protection and assistance to refugees

UNHCR's mandate to provide *protection* includes material assistance, which can often help make it possible for a country to accept refugees, since it relieves some of the financial burden. Effective legal protection is essential for refugees, but they must also be able to meet their basic needs – shelter, food, water, sanitation, medical care, and education. Assistance and protection are mutually reinforcing.

Over the years, UNHCR has increasingly been called upon to provide protection and assistance in countries where there is on-going conflict. This trend started in the Balkans and the Great Lakes region of Africa in the 1990s. Today, UNHCR is involved in the UN system's response to almost all complex emergencies.

Timely and effective humanitarian action is only possible if those who deliver aid can do so without obstruction. In conflict situations, this requires respect by all parties for the humanitarian principles of humanity, impartiality, neutrality and independence. Unfortunately, humanitarian principles have been flouted in countless situations. When these principles are not fully respected, humanitarian organizations, including UNHCR, face difficult decisions about the level of risk they are willing to assume, in an effort to reach people in need.

UNHCR around the world

Around 90 per cent of UNHCR's staff are based in the field. Together with many partners, they live and work alongside refugees in some of the most dangerous, desolate and remote places on earth. Their job includes providing protection and assistance in refugee camps and settlements and in urban areas; responding to emergencies; relocating refugees away from borders to improve safety; ensuring refugee women have a say in food distribution and social services; reuniting separated families; visiting border crossing points and detention centres; and advising governments on draft asylum laws, policies and practices. Increasingly, UNHCR staff and partners are working in areas of armed conflict where there is little or no effective government authority. International presence in insecure areas is in itself a form of protection and can provide a powerful means of discouraging abuses – but it involves risks for staff.

UNHCR also maintains offices in the capital cities of many countries, working regularly with ministries in charge of foreign and interior affairs. Since refugee protection cuts across many lines of responsibility, UNHCR also often engages with officials in charge of justice, immigration, human rights, police and the military, education and social affairs, and with mayors and other local authorities. UNHCR also serves as a resource to parliamentarians by making submissions to parliamentary committees on issues related to refugee law and is available to brief parliamentarians on specific refugee situations and on other issues of concern.

Who are refugees under UNHCR's mandate?

UNHCR's mandate encompasses refugees as defined in its Statute, in the 1951 Convention and/or 1967 Protocol, and as complemented by regional refugee instruments. Overall, the UN General Assembly and ECOSOC resolutions, together with State practice and treaty law, have further expanded UNHCR's competency in matters of international protection to encompass individuals who are outside their country of nationality or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from indiscriminate violence or other events seriously disturbing public order.

Who are "persons of concern"?

"Persons of concern to UNHCR" is a term used to refer to all persons on whose behalf UNHCR has the authority to act. Persons of concern to UNHCR include:

- Refugees
- Persons otherwise in need of international protection
- Stateless persons
- Internally Displaced Persons (IDPs) in specific situations, and
- Returnees, whether former refugees or internally displaced persons (IDPs).

How does UNHCR carry out its supervisory role?

In the absence of a specific mechanism akin to the treaty bodies established for other UN human rights instruments (see also Chapter 8), UNHCR has developed a variety of ways to carry out its supervisory role. These include:

- Providing technical and operational assistance and services, together with partners;
- Supporting States in developing laws and policies relating to asylum;
- Promoting and monitoring compliance with international standards;
- Intervening with governments and courts, as appropriate;
- Organizing consultations and conferences to enhance understanding and consensus on protection challenges, such as the High Commissioner's Protection Dialogues which have been held annually since 2007;
- Coordinating discussions/negotiations to enhance responses and solutions in specific displacement situations;
- Working to enhance States' capacity to conduct high-quality refugee status determinations;
- Issuing [guidelines on international protection matters](#) and on the eligibility of persons of specific nationalities for refugee status;
- Providing information and legal advice to persons of concern; and
- Developing and helping to implement comprehensive solutions strategies.

Paragraph 8 of UNHCR's Statute gives the High Commissioner authority to **supervise the application of international conventions for the protection of refugees**. Article VIII of the OAU Refugee Convention commits States parties to cooperating with UNHCR. In Europe, UNHCR's supervisory responsibility is also reflected in European Union law, which contains provisions for UNHCR to be consulted on asylum policy matters. UNHCR's supervisory responsibility is also reflected in the asylum laws of many countries.

Under Article 35 of the Convention and Article II of the Protocol States parties are obliged to **cooperate with UNHCR** in the exercise of its functions. States parties to the 1951

UNHCR governance

The UN General Assembly elects the **UN High Commissioner for Refugees** upon nomination by the Secretary-General, generally for a five-year term. The High Commissioner reports to the UN General Assembly through ECOSOC and is occasionally invited to brief the UN Security Council.

UNHCR's governing body is the **Executive Committee of the High Commissioner's Programme** (known as ExCom). Created by ECOSOC in 1958, it now has over 100 Member States. Its main tasks are to approve the High Commissioner's budget and programmes, advise the High Commissioner in the exercise of his or her statutory functions, notably international protection, and to scrutinize all financial and administrative aspects of the organization. Members of the Executive Committee are elected by ECOSOC. The Executive Committee meets annually for one week in October in Geneva in plenary session. In between these annual sessions, smaller meetings of the Standing Committee are regularly convened to carry on the body's work.

UNHCR's supervisory role

UNHCR's Statute, the 1951 Convention and its 1967 Protocol all assign UNHCR responsibilities for supervising the implementation of international instruments on refugees.

Convention further undertake to **provide information on laws, regulations, and decrees** they may adopt to ensure the application of the Convention.

State practice

Legislation on the obligation of national authorities to cooperate with UNHCR Among the many countries that have incorporated their obligation to cooperate with UNHCR into national legislation, decrees or regulations are [Armenia](#), [Belgium](#), [Bosnia and Herzegovina](#), [Cambodia](#), [Georgia](#), [Hungary](#), [Ireland](#), the [Republic of Korea](#), [Kyrgyzstan](#), [Liechtenstein](#), [Lithuania](#), [Moldova](#), [Montenegro](#), the [Philippines](#), and [Serbia](#). In addition, [Belgium](#), [Cambodia](#), [Croatia](#), [Greece](#), [Hungary](#), [Ireland](#), [Liechtenstein](#), [Lithuania](#), [Moldova](#), [Montenegro](#), and [Slovenia](#) are among countries with legislation specifically granting UNHCR access to individual files and decisions concerning asylum-seekers and refugees, generally subject to the consent of the individual concerned. In [Belgium](#), [Canada](#), [Georgia](#), [Greece](#), the [Republic of Korea](#), [South Africa](#), and [Uganda](#), legislation or decrees specifically permit UNHCR to intervene in individual asylum-seekers' cases at the appeal level. In the European Union, the [Asylum Procedures Directive](#) requires Member States to give UNHCR access to asylum-seekers, including in detention, at the border and in transit zones; to give UNHCR access to information on individual asylum applications, on the course of the procedure and on the decisions taken, provided that the asylum-seeker agrees thereto; and to allow UNHCR to present its views to any competent authorities regarding individual applications for international protection at any stage of the procedure.

2.5 UNHCR's partnerships

UNHCR works with a wide range of partners – over 900 in 2016 – including governments, intergovernmental and UN organizations, other international bodies, and NGOs.

UNHCR's partnerships with other UN agencies and intergovernmental organizations

Within the United Nations, UNHCR is one of a network of organs, funds, programmes, specialized agencies and commissions. UNHCR's most frequent [UN sister organizations](#) and key areas of collaboration with respect to refugees and returnees include (in alphabetical order):

- **International Labour Organization (ILO)** – programmes to enhance self-reliance and sustainable livelihoods of refugees in the contexts of integration and return, labour mobility and migration outcomes for refugees
- **International Maritime Organization (IMO)** – promotion of rescue at sea, including of asylum-seekers and refugees, in line with States' international obligations
- **UN Children's Fund (UNICEF)** – health, nutrition, and education rights of children, protection of unaccompanied children and reunification of refugee families separated in flight

Checklist for parliamentarians: Role of UNHCR

In order to promote State cooperation with UNHCR, parliamentarians are encouraged to:

- ✔ Support the inclusion in legislation of an obligation for the authorities to cooperate with UNHCR, including by sharing information and statistical data on refugees in the country, as well as by sharing laws, regulations and decrees relating to refugees.
- ✔ Support the inclusion in legislation of provisions allowing UNHCR access to asylum-seekers and refugees wherever they are located, including if detained or held at the border, and for asylum-seekers and refugees to be able to access UNHCR.
- ✔ Acknowledge and facilitate an advisory role for UNHCR in national asylum procedures, including, for instance, by notifying UNHCR of asylum applications, allowing UNHCR access to individual case files (with the consent of the asylum-seeker concerned), facilitating opportunities for UNHCR to be consulted by status determination authorities, and incorporating in national legislation the right for UNHCR to submit its own recommendations on individual cases at first instance or on appeal.
- ✔ Where UNHCR has made arrangements with an organization that is working on its behalf, ensure that cooperation is extended to that organization. Depending on the context, it can also be useful to include other NGOs in this cooperation, even if they are not formally working on behalf of UNHCR.

- **UN Counter-Terrorism Implementation Taskforce (CTITF)**
– collaboration in strengthening the coordination and coherence of counter-terrorism efforts of the UN system
- **UN Development Programme (UNDP)** – enhancing linkages between humanitarian and development programmes; durable solutions including in protracted refugee situations, integration and re-integration, Solutions Alliance
- **UN Office for the Coordination of Humanitarian Affairs (OCHA)**
– coordination of UN assistance in humanitarian crises that go beyond the capacity and mandate of any single humanitarian agency
- **UN Office on Drugs and Crime (UNODC)** – prevention of and combatting trafficking in refugees and other persons of concern to UNHCR and protection of victims
- **UN Office of the High Commissioner for Human Rights (OHCHR)** – integration of human rights into UNHCR's work and inclusion of people of concern into OHCHR's standard setting, monitoring and field implementation activities, coordination of advocacy efforts for groups or persons of concern to both organizations, joint training, complementary or joint interventions in individual cases
- **UN Population Fund (UNPFA)** – meeting reproductive health needs; prevention of sexually transmitted diseases, including AIDS; and prevention of, and protection from, sexual violence

- **United Nations Programme on HIV/AIDS (UNAIDS)** bringing together the expertise and resources of ten UN co-sponsor organizations, including UNHCR – strengthening HIV prevention, treatment, care and support; integration of information on AIDS and other sexually transmitted diseases in UNHCR’s health services
- **World Bank** – development and promotion of livelihood opportunities and self-reliance for refugees and returnees and of concessional development financing for affected communities
- **World Food Programme (WFP)** – distribution of food, including in emergencies
- **World Health Organization (WHO)** – improvement of the health, nutritional, sanitary, hygienic and environmental conditions of refugees and returnees.

UNHCR works closely with other UN agencies through the “Delivering as One” initiative, which aims at improving collaborative UN action in the areas of development, humanitarian assistance and the environment.

Another important partner is the **International Organization for Migration (IOM)**, an inter-governmental agency on migration. In 2016 it agreed a closer legal and working relationship with the United Nations as a [related organization](#). IOM works in four broad areas of migration management: migration and development, facilitating migration, regulating migration and responding to forced migration. The cooperation between UNHCR and IOM spans many countries and types of activities, and dates back to the founding of both organizations in the early 1950s.

UNRWA and the special case of Palestinians

The **United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)** was created in 1949 to assist those Palestinians who were displaced when the State of Israel was established. Today around 5.2 million Palestinians are registered with UNRWA, which operates in Jordan, Lebanon, the Syrian Arab Republic, Gaza and the West Bank.

UNRWA defines as Palestinian refugees those people, and their descendants, whose normal place of residence was in Palestine during the two years prior to the 1948 hostilities, and who lost their homes and livelihoods as a consequence of that conflict. UNRWA was not given a mandate to protect the Palestinian refugees; that responsibility was implicitly left to the countries in which they took refuge. Palestinians registered with and receiving assistance from UNRWA are excluded from UNHCR’s mandate. Palestinians outside the areas where UNRWA operates do, however, fall under UNHCR’s mandate.

The legal status of Palestinians varies according to both the date of their displacement, or that of their parents and grandparents, and their current place of residence. Some 850,000 Palestinians – those who remained in the new State of Israel after 1948 and their descendants – now have Israeli citizenship. An unknown number have acquired the nationality of countries outside the Middle East. Of the Arab States accommodating Palestinian refugees, only Jordan has granted them citizenship on any substantial scale. The status of the remainder has proved at best ambiguous and many Palestinians are in a very difficult situation. (See also Chapter 6.5 for more on the situation of Palestinian refugees in the asylum context.)

UNHCR also collaborates with the **Inter-Parliamentary Union (IPU)**, which acts as the focal point for worldwide parliamentary dialogue and works for peace and cooperation among peoples and for the firm establishment of representative democracy.

At the **regional level**, UNHCR engages with bodies such as the African Union, the Organization of American States, the Council of Europe, the European Union, the Organization for Security and Cooperation in Europe, the Economic Community of West African States, the Association of Southeast Asian Nations, the Asian-African Legal Consultative Organization, the Organization of Islamic Cooperation, and the League of Arab States.

UNHCR's partnership with the ICRC and the IFRC

The **International Committee of the Red Cross (ICRC)** is a key protection actor. An independent, neutral organization, the ICRC works to ensure humanitarian protection and assistance for victims of armed conflict, many of whom are persons of concern to UNHCR, and to promote respect for international humanitarian law.

The **International Federation of Red Cross and Red Crescent Societies (IFRC)** comprises 190 national Red Cross and Red Crescent societies. The Federation provides humanitarian relief to people affected by emergencies around the globe. UNHCR works closely in many countries with the Federation and/or with national Red Cross and Red Crescent Societies.

UNHCR's partnerships with NGOs

Partnership with non-governmental organizations (NGOs) is at the heart of UNHCR's delivery of its mandate. This partnership is based on the principles of equality, transparency, results-orientation, responsibility, and complementarity. It is guided by recommendations emerging from the [High Commissioner's Structured Dialogue](#) with the IFRC and NGOs. This Dialogue seeks to build strategic, trust-based relationships and to identify priority areas where the effectiveness of the UNHCR – IFRC – NGO partnership can be improved, especially at field level.

Collaboration with NGOs, particularly national NGOs, is vitally important in responding to the needs of populations affected by displacement and conflict. UNHCR now works with more than 700 NGOs as funded partners.

UNHCR's local partnerships give it an unmatched presence on the ground. Three quarters of its NGO partners are local organizations that have both local expertise and the ability to become operational at short notice in emergency situations. NGOs are also effective advocates for protection and for resource mobilization.

2.6 Supporting and funding refugee protection and UNHCR's work

Attending to the life-saving needs of refugees in emergency situations, setting up fair and efficient asylum procedures, providing protection for women, men, boys and girls, and helping refugees to return home or integrate in new host communities all have a financial cost. But the needs of refugees far outstrip the resources available. This is particularly the case in developing countries, which host the majority of the world's refugees.

Parliamentarians play a key role in budgetary appropriations and can help to ensure that the necessary resources are available, both at the national level and in the form of support for the work of UNHCR, other UN agencies, and NGO partners.

Budgeting for refugee protection at the national level

Parliamentarians can encourage their government to plan for, and fund, national institutions, procedures, and programmes to meet the needs of asylum-seekers and refugees. Of course, it can be hard to quantify all the costs of protecting refugees. Whenever a country hosts refugees, it is contributing in a very concrete way, for instance by making land available for refugee camps, or by giving refugees access to national health, education and other services.

In addition to funding national refugee protection mechanisms, some governments may be in a position to offer financial or technical support to countries hosting large refugee populations, or to admit refugees for resettlement. These different forms of international solidarity are all important contributions to refugee protection.

Contributing to UNHCR

UNHCR is one of the few UN agencies that depend almost entirely on **voluntary contributions** to finance its operations. Less than one per cent of UNHCR's annual budget comes from the United Nations; the rest is contributed by States, individuals, and other private sector donors such as foundations and corporations.

UNHCR presents its budgetary requirements every year in a Global Appeal and holds regular consultations with donors about priorities, programme implementation, and results. UNHCR publishes an annual Global Report and provides information to donors on its [Global Focus website](#).

Checklist for parliamentarians:

Supporting and funding refugee protection and UNHCR's work

In order to promote support and funding for refugee protection and UNHCR's work, parliamentarians are encouraged to:

- ✔ Advocate for national budgetary allocations to meet reception needs, including health, education and other services; to establish fair and efficient asylum procedures; and to support activities to find durable solutions.
- ✔ Encourage the inclusion of refugees in national development planning and budgeting – including in work related to the Sustainable Development Goals – thus facilitating the development of programmes that address refugee needs and avoiding parallel structures.
- ✔ If the government does not yet contribute to UNHCR, encourage the government to do so, since UNHCR's work depends on voluntary contributions.
- ✔ Where a country is already a donor to UNHCR, advocate for an increase in the contribution and urge positive and prompt replies to requests for funding for refugee emergencies.

UNHCR receives contributions from many governments, inter-governmental organizations, NGOs, individuals, foundations and corporations, but fewer than 20 donors provide around 95 per cent of UNHCR's total funds. UNHCR constantly works to enlarge its circle of donors, seeking donations from a wider range of countries and from the private sector. NGO partners also help by making public appeals on behalf of UNHCR operations.

UNHCR relies on the donor community to be able to respond quickly to emergency situations. Working with the countries receiving refugees, UNHCR establishes a donor-relations strategy in the first days of a new emergency and maintains it for the duration of the operation. But in recent years, record numbers of people have been forced to flee their homes, and the generosity of host countries has been stretched to the limit. The gap between needs and resources available for UNHCR's work has widened to alarming levels. When money is short, potentially life-saving programmes must be curtailed. Protracted displacement situations that are no longer in the media spotlight are often the most affected.

While quantity is important, so too is the quality of funding: its **predictability, flexibility and timeliness**. Early and predictable financial support helps UNHCR

plan its operations, and flexible funding allows UNHCR to use its financial resources efficiently. UNHCR therefore encourages donors *not* to earmark their contributions. If contributions must be earmarked, it is preferable that they be broadly earmarked to a region or a situation. That allows the High Commissioner to redirect funds when new needs arise or when refugee crises are resolved, thereby providing the quick response that governments, the public and refugees expect.

“ The Executive Committee Encourages States to channel flexible or unearmarked funds in a timely and predictable manner that will enable UNHCR to achieve its mandate on protection and solutions while responding to humanitarian situations. ”

UNHCR Executive Committee, [Conclusion No. 112 \(LXVII\) on international cooperation from a protection and solutions perspective](#), 2016

Roles and responsibilities for protecting refugees: What you can do

In order to ensure that States, UNHCR and other actors can fulfil their responsibilities for protecting refugees, in addition to the recommendations made at the end of Chapter 1, parliamentarians can:

Oversee the actions of their government

- You can monitor the government's actions with regard to the application of the 1951 Convention and 1967 Protocol and the fulfilment of other international obligations, including by calling for a parliamentary enquiry in situations of concern, supporting the work of national human rights bodies, ombudspersons and NGOs working on refugee issues, and visiting refugee facilities and camps to see the situation in person.

Take account of the age, gender and diversity of refugee populations

- You can ensure that strategies and legislation adopted to address refugee situations take account of the age, gender and diversity of refugees and asylum-seekers, with particular attention to at-risk individuals, such as children, women and girls, persons with disabilities and others with specific needs.

Advocate on behalf of individual refugees and asylum-seekers

- You can take actions in support of individual refugees and asylum-seekers to ensure they are protected in line with the State's obligations. Cases may be brought to your attention by the media, by constituents or other sectors of the community, such as schools or health service providers. In such cases you may wish to bring your concerns to the attention of relevant authorities, call for investigation of specific problems or allegations, and add your voice to initiatives to ensure (for example) that individual asylum-seekers and refugees are not returned to danger or wrongly detained, that they receive appropriate assistance, or are able to reunite with family members without undue delay.

Encourage cooperation with UNHCR and facilitate its supervisory role

- You can ensure that the government provides UNHCR with information on the number and condition of refugees (and asylum-seekers) on the territory, and on the laws, regulations and decrees in force related to refugees (and asylum-seekers), as required by the 1951 Convention.
- You can seek UNHCR's views on matters related to refugee protection, including proposed or pending legislation, court cases and policy decisions.
- If necessary, you can encourage the government to give UNHCR access to refugees (and asylum-seekers), including by stipulating such access in national legislation.

Ensure adequate and flexible funding and support

- You can support the allocation of sufficient funds for refugee protection structures within your own country and can consider contributing funds to UNHCR.
- You can support the development of public policies to ensure a flexible and prompt response to refugee situations that is focused on protection and solutions.
- You can support initiatives to strengthen international cooperation and solidarity with countries that are hosting large numbers of refugees, especially in protracted situations. (See also Chapter 5.4 on International cooperation, burden and responsibility sharing in mass influx situations.)

Chapter 3

Acceding to international instruments protecting refugees and building State asylum systems



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3.1 Introduction

The refugee problem is one of truly global proportions, affecting not only millions of people around the world, but also the policies and practices of virtually every country. To address this problem, UNHCR and the IPU believe that it is important to broaden the base of State support for the 1951 Convention relating to the status of refugees and its 1967 Protocol. This will help to ensure that refugee protection is more universal in scope and more consistent in content, and that the responsibility of caring for refugees is more equitably shared.

Along with accession to the core instruments of international refugee law, the establishment of national asylum systems makes it possible for States to respond to refugee influxes in a predictable manner and to limit the potential for abuse.

This chapter therefore examines the “why” and “how” of:

- Acceding to the core international instruments protecting refugees, including some frequently asked questions about accession; and
- The process and elements involved in developing State asylum systems, and the basic components of national legislation regulating asylum matters.

3.2 Acceding to the 1951 Convention and/or 1967 Protocol

Accession helps to build understanding among States on refugee protection. It strengthens predictability and accountability at the international level, and is a signal of support for the principle of international solidarity underpinning the refugee protection regime.

The IPU and UNHCR’s Executive Committee have repeatedly urged countries that have not yet acceded to the 1951 Convention and/or its Protocol to do so. As of early 2017, there were 148 States parties to either or both of these instruments.

“ The Executive Committee ... encourages States that have not already done so to consider accession to the 1951 Convention and the 1967 Protocol and to relevant, applicable regional instruments and/or to consider lifting existing limitations or withdrawing reservations in order to ensure the widest possible application of the protection principles they contain. ”

UNHCR Executive Committee, [Conclusions No. 103](#) (LVI), 2005

FAQs regarding accession:

❓ Does accession encourage refugees to come to a country?

There is no evidence to bear this out. Refugees are searching for safety, and the overwhelming majority remain in countries nearby their own. Some of the world’s largest refugee populations are hosted by countries that are not parties to refugee instruments.

❓ May a country that has not signed the 1951 Convention refuse to admit someone seeking protection?

No. The principle of *non-refoulement*, which prohibits the return of a refugee to a territory where his or her life or freedom is threatened, is a rule of customary international law. As such it is binding on all States, whether or not they have acceded to the 1951 Convention or 1967 Protocol.

Accession to the 1951 Convention and 1967 Protocol: Why is this important?

The 1951 Convention and the 1967 Protocol are the only global legal instruments explicitly addressing refugee protection. When a State accedes to the Convention and/or the Protocol it:

- Acknowledges and strengthens the universality of international refugee law, by committing itself to treating refugees in accordance with internationally recognized standards;
- Helps to avoid friction between States – recognizing that granting asylum is a peaceful, humanitarian and legal act, not a hostile gesture, and should be understood as such by the refugee's country of origin;
- Underlines its willingness to cooperate with the international community and UNHCR in finding solutions to refugee problems;
- Signals the State's willingness to share responsibilities for protecting refugees and thereby helps UNHCR to mobilize international support for the protection of refugees.

❓ Are there costs to accession?

Accession, in itself, does not carry any charges or costs. Of course, there are costs associated with building State asylum systems and with hosting refugees. These costs arise whether or not a State has acceded to the refugee treaties. However, accession shows the State's commitment to international standards, and this can help the State, working together with UNHCR, to mobilize international funding and other support to share burdens and responsibilities.

❓ Is a State party required to give land, housing or jobs to refugees?

Generally speaking, the Convention and Protocol aim to make sure that recognized refugees are treated on an equal footing with other lawfully-staying foreigners as far as acquisition of property, employment and housing are concerned. With respect to education, refugees are to be treated on an equal footing with nationals.

❓ Does accession mean that refugees will stay permanently?

Once someone is recognized as a refugee, States generally provide a residence permit allowing him or her to remain in the country on a long-term or permanent basis. In many countries, refugees may apply to become citizens after a certain period of time. However, the protection provided under the 1951 Convention is not automatically permanent. A person may cease to be a refugee when the conditions that caused him or her to become a refugee no longer exist.

❓ What if the local population has concerns about accession?

Parliamentarians can help to allay concerns that may be due to misconceptions about the 1951 Convention and 1967 Protocol. These instruments provide a framework within which a country can build its refugee policy. Without such a framework, there is a risk of ad hoc, discretionary responses.

Problems with local communities are more likely to arise where refugees do not have a formal, legal status. It is far better for a State to have a sound refugee policy in place *before* it has to cope with emergency. Policies hastily designed during a crisis situation are often detrimental to State interests.

► [The 1951 Convention relating to the Status of Refugees and its 1967 Protocol](#), UNHCR, 2011

3.3 Developing State asylum systems

Establishing a national asylum system helps a State to manage the arrival of persons who claim to be in need of international protection, and enables asylum-seekers and refugees to enjoy the rights to which they are entitled under international law.

Depending on the context, the most appropriate approach may be to accede to the 1951 Convention and/or the 1967 Protocol, and then to enact relevant national legislation and build the necessary institutions. In other circumstances, it may be better first to establish national legislation and accompanying institutions for the protection of refugees, grounded in the principle of *non-refoulement* and other obligations under international human rights law, with accession to the 1951 Convention and/or 1967 Protocol coming later as the final step in the process.

Elements of a State asylum system

Developing a State asylum system involves **establishing a legislative framework and related policies, strategies and action plans** to enable the government to fulfil its international obligations to asylum-seekers and refugees.

This framework establishes mechanisms to allow access to the territory of the State without discrimination for persons seeking protection, and for the fair and efficient assessment of their asylum claims. It sets out what needs to be in place so that asylum-seekers and refugees can exercise their rights and receive appropriate treatment, including attention to individuals with specific needs. Domestic laws and policies on asylum need to be framed fairly, taking into account the diversity of asylum-seeking populations.

The concept of the **rule of law** is central to a fair and efficient State asylum system. Protection systems grounded in the rule of law offer legal certainty in the application of rules, as well as accountability, equity and transparency. They are built on legal and policy frameworks that meet international standards and are administered by impartial and properly trained officials, supported by a functioning judiciary and other accountability structures. Such systems are especially important in times of crisis.

What parliamentarians can do towards accession

- If your State has not yet acceded to the 1951 Convention and/or the 1967 Protocol, you can take action to encourage accession. The legal process for becoming a party is described below.
- Where a request for ratification or accession has been brought before parliament, after having received the necessary information, vote in favour.
- If the government has already signed the 1951 Convention and Protocol but the process of ratification has been delayed, parliamentarians are encouraged to:
 - Use parliamentary procedure to ask why the process is taking so long and encourage the government to accelerate it; and
 - Use your right of legislative initiative to submit a bill on the matter.
- If the government opposes ratification or accession, consider:
 - Seeking to find out why
 - Using your right of legislative initiative to submit a bill on the matter; and
 - Helping to eliminate doubts and misunderstandings.

Questions about the process of accession

❓ How to accede to the 1951 Convention?

A State can accede to the 1951 Convention at any time by depositing an “instrument of accession” with the UN Secretary-General. The instrument of accession must be signed by the Head of State or government or the foreign minister. It is usually transmitted through the acceding country’s representation to the United Nations in New York. A model instrument for accession to the 1951 Convention can be found in Annex I.

❓ How to accede to the 1967 Protocol?

States wishing to accede to the 1967 Protocol follow a procedure similar to that for accession to the 1951 Convention. Accession to the 1967 Protocol means that the State agrees to apply the provisions of the 1951 Convention without any temporal or geographical limitations, unless in relation to the latter they maintain a declaration under paragraph (a) of Article 1B(1) of the 1951 Convention. A model instrument for accession to the Protocol can be found in Annex 2.

❓ Can a State accede simultaneously to both the 1951 Convention and the 1967 Protocol?

Yes. In fact, since 1967, most States have done so. It would not make sense today to accede only to the 1951 Convention, as the refugee definition in Article 1A only applies to persons who fled as a result of events occurring before 1951. When acceding simultaneously to both instruments, the temporal limitation of ‘events occurring before 1951’ is not applicable. However, States must still make a formal declaration regarding the geographical scope of the definition, as per Article 1B(1) of the 1951 Convention.

❓ What happens in situations of State succession?

In cases where States have disintegrated or been divided, the new State(s) are in principle bound by treaties to which the predecessor State was a party. The(se) new State(s) should accordingly notify the Secretary-General, as the depository of the 1951 Convention and the 1967 Protocol, of their succession to these treaties. Model instruments for succession can be found in Annexes 3 and 4.

❓ Can a State adopt reservations to the 1951 Convention and the 1967 Protocol?

In principle, reservations are permitted at the time of ratification or accession. However, under international law, any reservation must be compatible with the object and purpose of the treaty. Also, in accordance with Article 42 of the 1951 Convention, reservations may *not* be made to several of its fundamental provisions, namely:

- Article 1 (definition of the term “refugee”)
- Article 3 (non-discrimination)
- Article 4 (freedom of religion)
- Article 16(1) (access to courts)
- Article 33 (*non-refoulement*) and
- Articles 36–46 (final clauses).

Upon accession to the 1967 Protocol, reservations may be made to any Article of the 1951 Convention, except those mentioned above. No reservations may be made to Article II of the 1967 Protocol, concerning cooperation with UNHCR.

Instead of a reservation, States can make an “interpretative declaration”. Such declarations do not modify the legal effects of a provision, but express a State’s understanding of certain aspects of instrument.

❓ Can reservations, once made, be withdrawn?

Yes. Over time, and in response to changes in circumstances, many States have withdrawn reservations made at the time of accession. Indeed, eight States have done so since 2000.

Developing a State asylum system: Why is this important?

It is important to develop a State asylum system because:

- Doing so is part of the State's exercise of its sovereignty;
- Asylum-seekers and refugees have a right to protection and assistance;
- It reinforces the principle that granting asylum is not an unfriendly act;
- It shows that the State takes its international and regional obligations towards asylum-seekers and refugees seriously;
- It avoids ad hoc reactions, in particular in emergency situations, and enables the State to respond predictably, in a coordinated and holistic manner that engages all the relevant actors;
- It allows States to distinguish those towards whom they have protection obligations from others, including those who may be seeking to abuse the system; and
- It can boost the reliability and credibility of government responses to asylum-seekers and refugees, which in turn can encourage domestic and international cooperation and support for the protection response.

Legislation on asylum: The underlying purposes

In preparing or reviewing legislation, parliamentarians should keep in mind the underlying purposes of legislation on asylum:

- To define who qualifies for international protection, whether under the 1951 Convention or applicable regional instruments;
- To provide a clear basis for the rights and obligations of asylum-seekers and refugees;
- To ensure an effective division of labour and accountability among the different actors (for instance, central and local authorities, humanitarian and development organizations);
- To provide for and ensure certainty of funding; and
- To provide a framework within which durable solutions can be implemented.

Civil society, the legal community, UNHCR, and asylum-seekers and refugees themselves all play an important role in working with States to identify challenges and potential responses, and to advance accountability.

The process of developing a State asylum system

Developing a State asylum system is a complex process. Not all of it belongs in law. Although parliamentarians need to be aware of how legislation can most appropriately be used in the asylum context, experience has shown that the most effective systems involve a combination of instruments, i.e. laws, policies, strategies, action plans, and institutions.

Systems, laws, policies, strategies and action plans: What's the difference?

A **State asylum system** is the totality of strategies, laws, policies and action plans, in combination with adequate resources and institutions, that form a State's response to asylum-seekers and refugees.

Strategies set out the underlying purposes, objectives and expected outcomes that will guide the development of appropriate instruments (laws, policies and plans). Strategies are usually prepared by the executive and "anchor" a country's response to refugee situations. In some cases, parliament may be consulted.

Laws enacted by parliament are the backbone of a State system and the most appropriate means of addressing obligations stemming directly from international legal instruments.

Further details are provided in the box "Basic elements of national refugee legislation" below.

Policies are usually prepared by the executive and may be approved by parliament. They may precede legislation or provide guidance to implement laws once they are enacted. Policies are often concerned with:

- Decision-making processes and the indicators and factors to be considered;
- Coordination mechanisms, that is, which channels should be used to resolve specific problems;
- Operational guidelines or procedures.

Action plans are concerned with implementation. They outline specific responsibilities and tasks to be entrusted in a given situation to different actors at national and local levels. Action plans are usually prepared by government departments and are particularly well-suited for responding to emergencies.

Legislation on asylum: Which approach works best?

When developing legislation on asylum it is important to consider whether to have **one comprehensive law** or to incorporate reforms through **a number of amendments to existing law**. This issue is best resolved at the policy development stage, but parliaments should be aware of the pros and cons of each approach.

- One comprehensive document reduces the potential for gaps and makes policy development easier, as all issues are addressed centrally.
- Decentralizing reforms across many laws allows for better use of expertise across departments and can make it easier to secure political buy-in. But it can also pose coordination challenges and divert the focus of implementation away from outcomes for asylum-seekers and refugees.

A mixed approach may be best, with core principles and institutional structures outlined in a general law and targeted adaptations to existing legislation where necessary to ensure the best outcomes for asylum-seekers and refugees. For example, allocation of responsibility for provision of reception may be specified in the asylum law, but specific legislation on reception can provide more detail on the precise role of the responsible authorities.

It is important regularly to **review and update** asylum laws to ensure that they do not become unduly complex and that they can address contemporary challenges.

3.4 National laws and policies: The core of State asylum systems

The adoption of legislation on asylum is central to the development of a State asylum system and enables the provisions of the 1951 Convention and 1967 Protocol to be implemented effectively. It is also necessary to ensure that the national system takes account of the State's particular legal tradition and resources.

At a time when many governments are proposing legislation or undertaking administrative measures aimed at placing tighter controls on immigration and/or addressing national security concerns, special care should be taken to ensure that refugee protection principles are fully incorporated in the legal framework.

This is also true for legislation on expulsion, extradition, nationality, and penal codes, as well as on a range of issues from access to health care, housing and employment to child protection and trafficking. All of these areas of legislation can affect asylum-seekers' and refugees' enjoyment of their rights.

Basic elements of national refugee legislation

As an introduction to the process of drafting, review and approval of refugee protection legislation, parliamentarians may wish to consider the following elements, together with key international laws and standards as shown in italics. Each of these issues is covered in more detail in different chapters of this Handbook.

Eligibility for refugee protection: refugee definition, exclusion and cessation

Article 1A and 1B 1951 Convention; Article 1(1), 1(2) and 1(3) 1969 OAU Convention; [Cartagena Declaration](#); [Executive Committee Conclusion No. 103 \(LVI\) on the Provision of international protection including though complementary forms of protection](#)

- The refugee definition contained in the 1951 Convention/1967 Protocol should be reflected in national legislation, ideally verbatim. For African States parties to the 1969 OAU Convention, that Convention's broader regional definition should be used, while the definition recommended in the Cartagena Declaration should be used in Latin America. (See Chapters 1.2, 1.3 and 6.4.).
- Outside Africa, consider specifying in national legislation that persons fleeing indiscriminate violence, massive human rights violations or other events seriously disturbing public order may qualify for refugee status, following the example of the 1969 OAU Convention and the recommendation of the Cartagena Declaration. Alternatively, provide for complementary forms of protection. (See Chapter 6.7).
- Certain categories of refugees are excluded from international protection under the terms of 1951 Convention/1967 Protocol. On the one hand, this concerns refugees who are not in need of the Convention's protection, and on the other hand, those who are not considered deserving of it. These categories are covered in Article 1D (first paragraph), Article E and Article F of the 1951 Convention. It is recommended to adopt verbatim the language of the 1951 Convention to address these complex issues. (See Chapter 6.5 and 6.6).
- The clauses that set out conditions for ending refugee status also form part of the criteria. These cessation clauses are contained in Article 1C of the 1951 Convention and Article 1(4) of the 1969 OAU Convention. Since the cessation clauses are exhaustively enumerated, national legislation should also include them verbatim. (See Chapter 7.13).

Other definitions

- The definition of an asylum-seeker should include any individual who expresses a wish for asylum or a fear for their safety if returned to their country of origin, regardless of whether a formal application has been submitted and of how this fear is expressed. (See Chapter 7.5 – Registering and adjudicating claims.)
- In line with the Convention of the Rights of the Child, the term “child” should be used in legislation rather than “minor”. (See Chapter 1.4 – The Convention on the Rights of the Child: How it protects refugees.)
- The definition of an “unaccompanied and separated child” should be consistent with the definition used by the Committee on the Rights of the Child. (See Chapter 1.4 – Child and unaccompanied or separated child: What do these terms mean?)
- The definition of “family” should include at a minimum the spouse, minor children and minor siblings, including adopted children, whether adopted legally or on a customary basis, as well as other persons with whom there is a relationship of social, economic or emotional dependency and who have been living in the same household as the asylum-seeker/refugee. Families should be understood to include not only legally-recognized spouses, including same-sex spouses, but also customary and common law couples forming a genuine and stable family unit. (See Chapter 8.3 – The right to family life including family unity.)

Non-discrimination and human rights

Article 3 and 5 1951 Convention; Article IV 1969 OAU Convention; Article 2 Universal Declaration of Human Rights; Article 2 ICCPR; ICERD; Article 2 CEDAW, Article 2 CRC; Article 3-5 CRPD. Executive Committee Conclusions Nos. 15, 22, 80, 85, 93, 102, 103, 104, 105, 107, 108, 110

- Preliminary provisions should contain a general guarantee that the legislation will be applied without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- It is important to ensure that there are no provisions in the legislation that allow any authority to undertake any act that would discriminate against refugees or asylum-seekers. (See Chapter 8.2 – The principle of non-discrimination.)

Role of UNHCR

Article 35 1951 Convention; Article II 1967 Protocol; Article VIII 1969 OAU Convention

- There should be specific provisions on cooperation with UNHCR and facilitation of its supervisory role, including by providing information and data on the condition of refugees in the country, on the implementation of the relevant international refugee treaties, and on any laws, regulations and decrees related to refugees. (See Chapter 2.4 – The role of UNHCR, on UNHCR’s supervisory role.)

Non-refoulement and expulsion of refugees

Articles 32 and 33 1951 Convention; Article II (3) 1969 OAU Convention; numerous UNHCR Executive Committee Conclusions including Nos. 6, 7, 79, 81, 82, 94, 99, 103, 108; Article 3 CAT; Article 7 ICCPR

- National law should explicitly protect refugees and asylum-seekers from return, in any manner whatsoever, to the frontiers of territories where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.
- This principle of *non-refoulement* is codified in Article 33 of the 1951 Convention. The same Article contains an important exception: the benefit of *non-refoulement* may not be claimed by a refugee if there are reasonable grounds for regarding that individual as a danger to the security of the country in which he or she is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.
- States parties to the Convention against Torture, the International Covenant on Civil and Political Rights or to various international and regional human rights instruments have different and additional obligations concerning the principle

of *non-refoulement*. Parliamentarians in these countries may wish to consider consolidating these protections into one piece of legislation.

- In line with Article 32 of the 1951 Convention, legislation should also stipulate that a refugee lawfully in the country may only be expelled on grounds of national security or public order and is entitled to certain procedural safeguards before such expulsion. (See Chapter 4.2 – Admission to territory and the scope of the *non-refoulement* obligation.)

Non-penalization for irregular entry

Article 31 1951 Convention; UNHCR Executive Committee Conclusion No. 44 (XXXVII); UNHCR detention guidelines

- Refugees and asylum-seekers who enter or are present in a country without authorization should not be subject to penalties, provided they report without delay to the authorities and show good cause for their irregular entry or presence. (See Chapter 4.7 – Non-penalization for irregular entry.)

Reception facilities and assistance

UNHCR Executive Committee Conclusions No. 22 (XXII) Protection of asylum-seekers in situations of large-scale influx and No. 93 (LIII) Reception of asylum-seekers in the context of individual asylum systems

- While waiting for a final decision on their application for protection, asylum-seekers are entitled to reception conditions that meet their basic needs and provide a standard of living adequate for health and well-being. Ensuring a safe and dignified environment is a necessary component of fair and efficient asylum procedures.
- Assistance, which can be provided by the State, competent NGOs or, if necessary, UNHCR, may include:
 - Food, clothing, accommodation and medical care,
 - Advice on filing and presenting the asylum claim and on administrative matters,
 - Social counselling, and

- Legal aid (See Chapters 5.2 – Reception and treatment of asylum-seekers, and 7.3 – Minimum procedural guarantees.)

Procedures for refugee status determination

UNHCR Executive Committee Conclusion No. 8 (XXVIII) Determination of refugee status

- Status determination is key to protection, even though the procedural steps are not spelled out in the 1951 Convention. Many countries, as well as UNHCR, have accumulated a rich body of experience in assessing claims for refugee status. Refugee status determination involves the establishment of institutional structures responsible for decision-making and the allocation of resources to cover not only the day-to-day operational costs but also capacity-building, continuous learning, and quality assurance. (See Chapters 6 and 7.)
- UNHCR's Executive Committee has recommended certain minimum procedural requirements for status determination procedures (see also Chapter 7.3 – Minimum procedural guarantees.) These requirements are grounded in international and regional human rights law, including on the fairness of procedures and the right to an effective remedy.
- Using differentiated case processing modalities can contribute to effective management of diverse caseloads, ensuring expedient access to international protection for those who need it and quick negative decisions for those who do not. Such case processing modalities must use available resources to achieve the appropriate outcome for all individuals in the most **efficient** manner, while ensuring **fair** refugee status determination procedures, in accordance with procedural safeguards. A high **quality** system would also be **flexible**, so as to allow for adapting the choice of case processing modalities to change in profiles and/or numbers of asylum-seekers.

Identity and travel documents

Articles 27 and 28 1951 Convention, with Schedule and Annex; Article VI OAU Convention; Executive Committee Conclusions Nos. [35 \(XXXV\)](#), [49 \(XXXVIII\)](#), [91 \(LII\)](#), [114 \(LXVIII\)](#)

- Legislation should provide for the issuance of identity documents to both asylum-seekers and refugees. Recognized refugees should be given a status that allows them to reside lawfully in the country, and documentation given to recognized refugees should clearly indicate this. (See Chapters 5.2 – Reception and treatment of asylum-seekers, on registration and identification of asylum-seekers and refugees and 7.12 – Recognition of refugee status, on identity documentation.)
- Recognized refugees should be given travel documents. This does not imply the granting of nationality to a refugee, but makes it possible for the refugee to travel (for instance for family visits, education, employment, health care, etc.) and to return to the country of asylum. Travel documents may also be issued to enable refugees to travel for the purposes of resettlement or voluntary repatriation. (See Chapter 7.12 – Recognition of refugee status, on identity documentation.)

Other rights and obligations of refugees

Chapters II, III, IV and V 1951 Convention

- The following rights should be granted in accordance with the standards applicable to nationals:
 - Freedom of religious practice and religious education (no reservations permitted)
 - Public elementary education
 - Public relief, social security and labour laws
 - Access to courts and legal assistance (no reservations permitted)
 - Artistic rights and patent rights

- The 1951 Convention also deals with a variety of matters that have an important effect on a refugee's daily life, such as:
 - Acquisition of movable and immovable property (Article 13)
 - Gainful employment (Articles 17, 18 and 19)
 - Housing (Article 21)
 - Public relief (Article 23)
 - Labour legislation and social security (Article 24)
- Every refugee has duties to the country of his or her refuge and must comply with the existing laws and regulations as well as with measures taken by the authorities to maintain public order (Article 2). (See Chapter 8.3 – The obligations and rights of refugees.)

Confidentiality

*Executive Committee [Conclusion No. 91 \(LII\)](#)
[Registration of refugees and asylum-seekers](#)*

- The confidentiality of personal information must be safeguarded. Personal information about asylum-seekers or refugees should as a rule not be shared with other parties, and in particular not with their country of origin, as this may endanger their safety or that of family members or associates.
- Disclosure of personal information should be subject to the informed consent of the refugee or asylum-seeker, and respect other data protection principles. Where information is requested by another State, the State considering disclosure will need to take into account the legitimate interest of the requesting State, the potential risk to the individual(s) concerned, and their right to privacy. (See Chapter 7.4 – Ensuring confidentiality in line with relevant data protection principles and standards.)

Durable solutions

Article 34 1951 Convention; Executive Committee Conclusions [Nos. 101 \(LV\) on Legal safety issues in the context of voluntary repatriation of refugees, 104 \(lvi\) on Local integration, No. 112 on international cooperation from a protection and solutions perspective](#)

- It is important to put in place measures that make it possible for refugees to be self-reliant pending a durable solution; to establish a legal framework and systems to ensure that refugees are able to enjoy more rights as time passes; and that all solutions, including voluntary repatriation and integration in the country of asylum, can be carried out in safety and dignity. (See Chapter 9.3 – Voluntary repatriation and Chapter 9.4 – Local integration.)
- In countries willing to establish resettlement or humanitarian admission programmes, an appropriate legal framework is needed, spelling out the status and rights of resettled refugees. (See Chapter 9.5 – Resettlement.)
- Nationality legislation should be adapted to allow recognized refugees to be naturalized on an expedited basis, to reduce costs of naturalization proceedings, and to address any obstacles to naturalization that refugees may face in view of their particular situation. (See Chapter 9.7 – Naturalization.)
- In countries with active migration or skilled entry schemes, administrative and policy frameworks should be reviewed to ensure that refugees are not prevented by their status from accessing such programmes. Adaptations may be needed to enable refugees to take up such opportunities. (See Chapter 9.6 – Innovative approaches)

Chapter 4

Managing the border and regulating the entry of refugees



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4.1 Introduction

Global communications and international transport have made it easier than ever for people to move between countries and continents. This cross-border movement brings both challenges and opportunities.

Most countries encourage international travellers to visit for business, education, tourism or family reasons, and many countries admit (and even recruit) selected non-citizens as permanent immigrants. At the same time, borders often appear impenetrable to people trying to flee persecution or armed conflict, and many lose their lives in efforts to reach safety.

States are increasingly preoccupied by irregular migration, that is, by people who cross their borders without prior authorization, often without any identity documents. As a general rule, no country is obliged to allow foreigners to enter its territory. It is one of the core elements of sovereignty that a State may decide under what circumstances it will permit non-citizens to enter. As an exception to this rule, States are obliged to respect the principle of *non-refoulement* contained in international refugee law and human rights law. That principle establishes that no one shall be returned to a territory where his or her life, physical integrity or freedom would be threatened.

Today, border management systems operate in an extremely complex context. Irregular migration is occurring on every continent, against a backdrop of very real security concerns. People with many different reasons for leaving their countries use the same routes and means of travel, and border control mechanisms and other strategies for dealing with unauthorized entries do not always make the necessary distinctions.

Properly functioning border management systems can help States to regulate the entry of foreigners, comply with their international refugee protection obligations and deny a “safe haven” to persons responsible for terrorism, war crimes and crimes against humanity.

This chapter provides guidance on developing national laws and policies as regards:

- Admission to territory and the scope of the State's *non-refoulement* obligations;
- Addressing security concerns without undermining refugee protection;
- Challenges posed by mixed migration;
- Smuggling, trafficking and refugee protection;
- Developing and strengthening protection-sensitive entry systems in mixed migration contexts; and
- Non-penalization for irregular entry.

For more information on migrants and their human rights, see [Migration, human rights and governance](#), Handbook for Parliamentarians No. 24, IPU, International Labour Organization, and Office of the High Commissioner for Human Rights, 2015

4.2 Admission to territory and the scope of the *non-refoulement* obligation

The starting point for international protection is the admission of people fleeing persecution and violence to a territory where they can seek asylum and find safety. It is thus crucial that:

- Governments and parliamentarians understand the State's *non-refoulement* obligations, in order to establish entry systems that uphold these obligations; and
- Border guards, immigration officials and other government personnel who have first contact with foreigners arriving by land, sea and air have a clear understanding of the principle of *non-refoulement* and their resulting responsibilities, including mechanisms to refer new arrivals to the appropriate authorities within the country.

***Non-refoulement* obligations under international refugee and human rights law**

As mentioned in Chapter 1, States have *non-refoulement* obligations under international refugee and human rights law, whether treaty-based or as part of customary international law.

Under international refugee law, the principle of *non-refoulement* contained in **Article 33(1) of the 1951 Convention protects refugees from expulsion or return to a threat to their life or freedom** on account of their race, religion, nationality, membership of a particular social group or political opinion. Asylum-seekers are protected by this principle until their status has been determined.

The **only permissible exceptions** to the principle of *non-refoulement* as provided for in international refugee law are set out in Article 33(2) of the 1951 Convention. They apply in two circumstances: if there are reasonable grounds for regarding an individual refugee as “a danger to the security of the country in which he [or she] is” or if he or she, “having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”.

Like any exception to human rights guarantees, **Article 33(2) must be interpreted restrictively and with full respect for the principle of proportionality**. This means it must be shown that the danger posed by the refugee to the security of the host country or to its community is sufficiently serious to justify *refoulement*. The “danger to the security” exception requires a threat to be to the country of refuge itself and to be very serious. The finding must be based on reasonable grounds and supported by credible and reliable evidence. The “danger to the community” exception requires a final conviction of a particularly serious crime as well as a finding that the person constitutes a future risk.

In both cases there must be a rational connection between the removal of the refugee and the elimination of the danger. *Refoulement* must be the last possible way to eliminate or alleviate the danger and it must be proportionate, in the sense that the danger to the country or to its community must outweigh the risk to the refugee upon *refoulement*.

By contrast, **under human rights law, *refoulement* is never permitted if it would expose the individual concerned to a risk of torture, or to cruel, inhuman or degrading treatment or punishment.**

Article 3 of the Convention against Torture prohibits the expulsion or return of anyone to a place where there is a substantial danger of torture. Articles 6 and 7 of the International Covenant on Civil and Political Rights have also been interpreted as prohibiting expulsion or return to torture, or to cruel, inhuman or degrading treatment or punishment or the death penalty. Several regional human rights instruments have similar provisions.

In countries that have acceded to both Conventions, asylum-seekers may invoke protection under either treaty. There are a number of situations in which this might be relevant: an individual may have missed a deadline under national law to apply for refugee status, a claim may have been erroneously denied under refugee criteria, or someone might not qualify for refugee status yet still be at risk of torture. However, people who are protected from *refoulement* under the Convention against Torture do not necessarily receive other rights and benefits accorded to refugees, although they are entitled to the rights provided by international human rights law more generally.

While the 1951 Convention and the 1967 Protocol require national implementation, [the UN Committee against Torture](#), the expert body set up by the Convention against Torture to monitor implementation by States parties of their obligations under that Convention, can hear complaints from individuals under specific circumstances. The case-law of the Committee provides helpful guidance on core human rights obligations, including in cases where complaints are brought by persons whose applications for refugee status have already been rejected.

The scope of *non-refoulement*: A comparison

The *non-refoulement* provisions of the 1951 Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment overlap to some extent but there are important differences:

1951 Convention and 1967 Protocol

Who is protected?

Refugees, that is persons with a well-founded fear of persecution on account of their race, religion, nationality, membership of a particular social group, or political opinion and asylum-seekers

From what harm?

Threat to life or freedom

Exceptions?

Reasonable grounds for regarding a refugee as a danger to the security of the country of asylum or, having been convicted by a final judgement of a particularly serious crime, as constituting a danger to the community of that country

Convention against Torture

Who is protected?

Any person

From what harm?

Substantial grounds for believing that the person would be in danger of being subjected to torture

Exceptions?

No exceptions

The principle of *non-refoulement*: What are the State's responsibilities?

The prohibition of *refoulement*

- Applies to all refugees, and to asylum-seekers whose status has not yet been determined, as this group may include refugees;
- Applies wherever a State exercises jurisdiction, including at the border and extraterritorially, for instance in the context of interception on the high seas;
- Engages the State's responsibility as soon as someone claims to be at risk or to fear return to his or her country of origin or any other country. There is no single correct formula or phrase for how this fear needs to be expressed;
- Requires States to respect the principle of non-discrimination, and to refrain from restricting entry on the basis of a person's nationality, religion, ethnicity, health status, or other criteria;
- Applies not only to return to the country of origin but also to removal to any other – third – country where a person has reason to fear persecution, serious human rights violations or other serious harm, or from whence he or she risks being sent to his or her country of origin (known as indirect or chain *refoulement*);
- Requires a State seeking to remove an asylum-seeker from its territory or jurisdiction to establish on an individual basis before implementing any removal measure that the person concerned is not at risk of harms covered by the prohibition of *refoulement*; and
- Requires the State to provide an effective remedy against the proposed removal, including the possibility of suspending the removal pending a final determination of the individual's status.

► [Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol](#), UNHCR, 2007

► [Guidance note on safeguards against unlawful or irregular removal of refugees and asylum-seekers](#), UNHCR, 2014

Expulsion

Just as States have a right to control the entry of foreigners to their territory, as part of the exercise of their sovereignty, they are also entitled to remove or deport foreigners who are present without authorization (and in specific circumstances, those legally present). In so doing, however, they are bound by their obligations under international refugee and human rights law and in particular by the principle of *non-refoulement*.

While deportation or removal provisions may be applied to foreigners in general, the expulsion of a legally present refugee is only permitted in exceptional circumstances: Article 32 of the 1951 Convention prohibits a State from expelling "a refugee lawfully in its territory save on grounds of national security or public order," and even if these grounds are applicable, the refugee may only be expelled to a country where his or her life or freedom would not be in danger. The host State's *non-refoulement* obligations under Article 33 of the 1951 Convention and international human rights law remain applicable, as explained above.

Article 32 also stipulates that any such expulsion order can only be issued under due process of law, which should include the right to appeal or review the decision. Furthermore, provisions should be made to allow the affected individual a reasonable

Checklist for parliamentarians:

Non-refoulement principle

To ensure respect for the principle of *non-refoulement*, parliamentarians are encouraged to:

- ✔ Ensure that legislation specifies that no one shall be returned, expelled or extradited in any manner whatsoever to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, or to cruel, inhuman or degrading treatment or punishment.
- ✔ Ensure that legislation specifies that refugees and asylum-seekers shall not be *refouled*. Since Article 33 of the 1951 Convention (the prohibition on *refoulement*) is not subject to reservation, the phrasing of such a provision is of utmost importance. In general, it is safest to transpose this provision verbatim into national law.
- ✔ Ensure that legislation explicitly protects from *refoulement* persons who fall under applicable regional refugee definitions.
- ✔ Support the inclusion in legislation of a provision explicitly clarifying that the prohibition of *refoulement* includes indirect *refoulement*. In any event, protection from indirect *refoulement* should not be explicitly or implicitly excluded.
- ✔ Consider supporting the inclusion of a provision clarifying that protection from *refoulement* includes non-rejection at the frontier, so that no one who is seeking asylum can be rejected at the border if this would result in their being returned, directly or indirectly, to a country of persecution, torture, inhuman or degrading treatment or punishment.
- ✔ Ensure that the scope of application of Article 33(1) of the 1951 Convention is not implicitly or explicitly restricted to conduct within the territory of a State party, but applies wherever effective jurisdiction is exercised. The decisive criterion is not whether a person is on the State's territory, but rather, whether he or she comes within the effective control and authority of that State. If possible, regulate this issue explicitly in the text of the law.

Exceptions to the non-refoulement obligation

- ✔ Ensure that legislation regarding *exceptions to the non-refoulement* obligation regarding refugees does not go beyond what is contained in Article 33(2) of the 1951 Convention. The best way to make clear that exceptions apply in very limited circumstances would be to incorporate the text of Article 33(2), which permits the *refoulement* of a refugee only:
 - (i) where there are “reasonable grounds for regarding [the refugee] as a danger to the security of the country in which he is” or
 - (ii) where the refugee “having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”.
- ✔ Ensure that no exceptions are allowed if the State is party to the OAU Refugee Convention (Article 11(3)) or the American Convention on Human Rights (Article 22(8)), since the prohibition of *refoulement* regarding refugees in those treaties is absolute.
- ✔ Ensure that legislation also refers to the absolute nature of protection from *refoulement* under international human rights law, notwithstanding the exceptions under Article 33(2) of the 1951 Convention.

Checklist for parliamentarians:

Expulsion

To ensure respect for international law in the context of expulsion, parliamentarians are encouraged to:

- ✔ Ensure that asylum-seekers and refugees are excluded from the scope of expulsion, deportation or removal provisions applying to foreigners in general. This is in order to ensure adherence to the principle of *non-refoulement*. Return to the country of origin is only permitted in the exceptional circumstances described in Article 33(2) of the 1951 Convention, and in some cases international human rights law may bar such return.
- ✔ Ensure that an expulsion order may not be issued to a refugee lawfully in the territory save on grounds of national security or public order in accordance with Article 32(1) of the 1951 Convention.
- ✔ Where domestic legislation provides for expulsion, ensure that the conditions and procedural safeguards for refugees contained in Article 32(2) and (3) of the 1951 Convention are explicitly mentioned in the law.
- ✔ Ideally, expulsion orders should not be issued to asylum-seekers whose claims are pending. At a minimum, the law should provide for the non-implementation of expulsion orders until a final decision on the asylum application has been made. If the asylum-seeker is recognized as being in need of international protection, any previously issued expulsion orders should automatically lose their validity.

period of time to seek legal admission into another country.

Expulsion measures against a refugee should only be taken in exceptional cases and after due consideration of all the circumstances, including the possibility for the refugee to be admitted to a country other than his or her country of origin, and with due respect for the State's obligations under international human rights law. An asylum-seeker is protected by the principle of *non-refoulement* for the duration of the asylum proceedings. If he or she is recognized as being in need of international protection, any previously issued expulsion order should automatically lose its validity.

“ The Inter-Parliamentary Union ... calls on host countries not to deport refugees or expel them to the border of another country in which their life would be threatened for ethnic, religious or nationality reasons, membership of a certain social category or political opinion. ”

[Resolution adopted unanimously by the 133rd IPU Assembly, Geneva, 2015](#)

Extradition proceedings

The principle of *non-refoulement* is fully applicable in the context of extradition. It applies not only with regard to a refugee or asylum-seeker's country of origin, but also any other country where the wanted person would be at risk of persecution or of indirect *refoulement* to the country of origin. Where the extradition of an asylum-seeker is requested, asylum proceedings must be conducted and a final determination made on the claim, preferably by the asylum authority, before a decision is made on the extradition request.

Where there is a duty to extradite under a bilateral or multilateral extradition agreement or under other international or regional instruments (often framed as a duty to “extradite or prosecute”), the State’s *non-refoulement* obligations prevail over an obligation to extradite, including under treaties to suppress and prevent terrorism. The UN Security Council and General Assembly have stated repeatedly that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, including international human rights, refugee, and humanitarian law.

In the context of proceedings that may result in the extradition of an asylum-seeker or a refugee, States must also ensure respect for data protection principles and the confidentiality of information related to a person’s refugee claim. In such cases, the legitimate interest of the requesting State in prosecuting persons responsible for criminal acts may justify the disclosure of certain personal data. At the same time, however, the requested State must also take into account the legitimate confidentiality and privacy interests of the asylum-seeker or refugee and consider the potential risks that may result from sharing information about the wanted person with the authorities of the requesting State. This is especially important where the requesting State is the individual’s country of origin. In all such cases, the existence of an asylum application should remain confidential. (For more information see Chapter 7.4 – Ensuring confidentiality in line with relevant data protection principles and standards.)

States sometimes rely on “diplomatic assurances” in the context of extradition and removal procedures, such as expulsion and deportation, and transfer to other countries through informal measures. In such situations, however, the sending State only upholds its human rights obligations if these assurances in fact *remove* the risk to the individual concerned, and if these assurances are subject to effective monitoring. The [UN Special Rapporteur on Torture](#) has affirmed that in circumstances where there is a consistent pattern of gross, flagrant or mass violations of human rights, or of systematic practice of torture, “the principle of *non-refoulement* must be strictly observed and diplomatic assurances should not be resorted to”

In the case of a request for the extradition of a refugee to his or her country of origin, the sending State cannot rely on assurances that the person will not face persecution or other forms of harm upon surrender. It would be fundamentally inconsistent with the protection afforded by the 1951 Convention/1967 Protocol for a sending State to look to the very agent of persecution for assurance that an individual whose fear of persecution has already been established will be well-treated upon return.

Where a State receives a request for the extradition of an asylum-seeker to his or her country of origin, a final decision should be made on the asylum application prior to any decision on the extradition request. In any event, a decision to extradite should not be implemented as long as it has not been determined whether the wanted person is indeed a refugee. Diplomatic assurances regarding the treatment of an asylum-seeker in case of return do not affect the host State’s obligation under international refugee law to respect the principle of *non-refoulement*.

Checklist for parliamentarians:

Extradition proceedings

To ensure respect for international law in the context of extradition, parliamentarians are encouraged to:

- ✔ Encourage the explicit inclusion in national legislation of provisions obliging relevant authorities to refuse to extradite a refugee or asylum-seeker if it would be inconsistent with the State's *non-refoulement* obligations under international or regional refugee and human rights law, including in situations where assurances that the person concerned will not be subjected to persecution or other forms of harm, upon surrender (diplomatic assurances) have been offered.
- ✔ Ensure that there are separate procedures with due process safeguards for decisions on asylum claims and on extradition requests. As a good practice, extradition authorities should be bound by a determination on refugee status or other international protection needs made by the asylum authorities.

Certain provisions in extradition law itself are also particularly relevant where a refugee or asylum-seeker is the subject of an extradition request. These include the "political offence exemption", which is applicable in many countries and prohibits the extradition of foreigners who are wanted for an offence deemed to be political in character. So-called "discrimination clauses" found in an increasing number of multilateral and bilateral extradition agreements as well as national legislation are also relevant. These provide for refusal of extradition on the basis that a request for extradition for an ordinary criminal offence has been made for political reasons, or with discriminatory or persecutory intent.

State practice

Legislation prohibiting the extradition of refugees and asylum-seekers – In a number of States, national legislation or regulations explicitly provide for extradition to be refused if the wanted person is a refugee, as in [Argentina](#), [Armenia](#), [Brazil](#), [China](#), [Moldova](#), [Serbia](#), and [Uganda](#). The extradition of asylum-seekers is explicitly prohibited in some countries, such as in [Argentina](#), [Brazil](#) and [Georgia](#), for example.

- ▶ [Guidance note on extradition and international refugee protection](#), UNHCR, 2008
- ▶ [Note on diplomatic assurances and international refugee protection](#), UNHCR, 2006
- ▶ [Guidance note on safeguards against unlawful or irregular removal of refugees and asylum-seekers](#), UNHCR, 2014

4.3 Ensuring security and protecting refugees

Insecurity stemming specifically from violent conflict, extremist groups, and organized crime has become a common feature of daily life in many locations around the world. Often these situations have deeper roots, stemming from growing inequality, weak rule of law, poor governance, and in some instances the effects of climate change on the environment and resulting competition for scarce resources. Nowhere are the effects of this insecurity more visible than in the lives of persons seeking international protection. At the same time, concerns about international terrorism have intensified, particularly in the context of large-scale movements of refugees and migrants in many parts of the world, often resulting in measures such as push-backs of refugees and asylum-seekers at borders, detention, and restricting access to the territory and to asylum procedures. Asylum-seekers and refugees may be negatively affected not only by restrictive legislative or administrative measures but also by negative attitudes toward foreigners that flourish in times of crisis.

States have a duty and a legitimate interest in preventing those who support, plan, commit or intend to commit terrorist acts from securing access to their territory. The challenge is to make sure that security measures are not implemented at the expense of persons forced to leave their home countries due to threats to their life and safety, often caused by war and persecution.

Restricting the access of asylum-seekers and refugees to one country may simply shift movements to other routes, aggravate the humanitarian situation, and contribute to the growing business of human smugglers and traffickers (see Chapter 4.5 Smuggling, trafficking and refugee protection).

Security and refugee protection are not mutually exclusive. An important starting point is to recognize that refugees are themselves fleeing from persecution and violence, including terrorist acts. The international refugee instruments do not provide a safe haven to terrorists and do not shield them from criminal prosecution, extradition or expulsion. On the contrary, they recognize that the identification of such persons is both possible and necessary, and foresee their exclusion from refugee status.

What is needed is an integrated response to asylum and migration flows that enables States to identify persons entering their territory, and to respond to protection needs as well as to security concerns in line with their obligations under international law. This requires robust and efficient systems to register and screen individuals seeking entry. Screening for persons who may pose a security threat needs to be conducted in conformity with the principles of necessity, proportionality and non-discrimination, and subject to judicial control. (See also, Chapter 4.6 Protection-sensitive entry systems in mixed migration contexts.)

Both from a protection and a security perspective, it is critical to establish asylum systems that allow for the fair and efficient determination of claims for international protection. When States assume responsibility for refugee status determination, they can conduct checks and inquiries, and ensure the rigorous and careful application of the exclusion

Security concerns: The 1951 Convention's response

The drafters of the 1951 Convention built a number of provisions into the Convention to enable the security concerns of States to be managed appropriately.

First and foremost, the refugee definition in Article 1A(2) only applies to persons fleeing persecution, not to those seeking to evade criminal prosecution. Article 1F sets out the grounds for exclusion from refugee status, based on a person's involvement in certain serious crimes or heinous acts (see [Chapter 6.6 – Who should be excluded from refugee status?](#)) Article 2 states that refugees must respect the laws of their host country – they are not immune from prosecution. Article 9 is designed to allow States to take provisional measures pending the examination of a claim, where essential to the country's security in time of war or other grave exceptional circumstances. Articles 32 and 33(2) allow States to expel refugees who are a threat to the community, public order, or national security, subject nonetheless to procedural safeguards (see Chapter 4.2 Admission to territory and the scope of the *non-refoulement obligation*). Although asylum systems are not immune to abuse, individual asylum-seekers undergo detailed scrutiny in the course of the examination of their claims.

clauses. Good practice also involves cooperation between border guards, security services and immigration and asylum authorities within a given State, as well as with other States along travel routes and with regional and international organizations (such as, INTERPOL, Europol and Frontex), based on a clear understanding of international protection principles and standards. Measures to ensure the security of host countries and to protect refugees need to be included not only at the point of entry, but also after arrival, through access to livelihoods, education and social services, as well as programmes fostering self-reliance and interaction with host communities, with beneficial effects also from a law enforcement and security perspective.

Anxiety about international terrorism risks fueling the perception of foreigners, whether migrants, asylum-seekers or refugees, as a threat to security. If asylum is equated with a safe haven for terrorists, this is not only legally wrong but may result in carefully built refugee protection standards being eroded while allowing racism and xenophobia to flourish. Resolute leadership can help to de-dramatize and depoliticize the fundamentally humanitarian challenge of protecting refugees, and build a better understanding of the right to seek and enjoy asylum.

“ The Security Council ... stress[es] that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights law, refugee law, and humanitarian law...”

“ Recall[s] in addition the right to seek and enjoy asylum reflected in Article 14 of the Universal Declaration and the *non-refoulement* obligation of States under the [1951 Refugee] Convention, together with its [1967] Protocol ... and also recall[s] that the protections afforded by [these instruments] shall not extend to any person with respect to whom there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations.”

- ▶ [Addressing security concerns without undermining refugee protection – UNHCR’s perspective](#), UNHCR, 2015
- ▶ [Open briefing to United Nations Security Council Counter-Terrorism Committee](#), UNHCR, 2017

4.4 Challenges of mixed population movements

Where asylum-seekers and refugees are part of irregular, mixed flows of people on the move, there can be particular challenges to ensuring access to protection and to upholding respect for the principle of *non-refoulement*. Refugees face many obstacles intended to prevent irregular arrivals in general, and often have no choice but to use potentially dangerous routes or means of travel in their search for safety. Irregular movements by sea have resulted in a mounting death toll across the globe, from the Mediterranean region to South East Asia and from the Gulf of Aden to the Caribbean. Overland travel can be equally dangerous, with harrowing conditions faced by persons crossing deserts or mountainous regions on foot, or stowed away in lorries or on trains.

Numerous administrative measures have the effect of denying refugees and asylum-seekers access to safe territory. These include formal immigration requirements requirements, carrier sanctions, pre-entry clearance and other offshore border controls. There are also physical obstacles such as fences, walls, closed borders, and pushbacks. Yet, as refugees themselves have pointed out, even closed borders will not deter people fleeing for their lives. In the process, they face many risks, including torture, rape, kidnap, extortion, and other forms of abuse and exploitation at the hands of smugglers and traffickers. Unaccompanied and separated children and women are particularly at risk. And while the media focus tends to be on movements from countries of the global South to developed countries of the global North, the magnitude of South–South flows dwarfs that of movement from the developing to the developed world.

Checklist for parliamentarians: Ensuring security and protecting refugees

To ensure practical and principled responses to security concerns in line with international legal principles for the protection of refugees, parliamentarians are encouraged to:

- ✔ Ensure that any discussion on security safeguards in the context of border control starts with an acknowledgement that refugees are themselves escaping persecution and violence, including terrorist acts.
- ✔ Where governments wish to strengthen border controls and security checks, including through the use of biometrics such as fingerprints, iris scans and/or facial characteristics, ensure that:
 - Controls are conducted in conformity with the principles of necessity, proportionality and non-discrimination, and are subject to judicial oversight;
 - Individuals are not singled out solely on the basis of their assumed nationality, race, religion or ethnicity, and
 - Checks are conducted in line with data protection principles and other relevant human rights standards.

Holistic strategies to respond to mixed movements: What are these?

There is no single measure that can address the challenges posed by large-scale mixed population movements. Regional strategies need to be developed that engage countries of origin, transit and destination all along key migration routes in collaboration that goes beyond measures to strengthen border controls and to prevent smuggling and trafficking. Broader elements of a holistic approach could include:

- Measures to strengthen search and rescue operations at sea;
- Support to help transit countries to identify persons with international protection needs as well as others with specific needs (such as stateless persons, victims of trafficking, unaccompanied and separated children, unaccompanied elderly, disabled persons) who are travelling as part of mixed population flows;
- Support to build and strengthen asylum systems in transit and destination countries;
- Offers of emergency relocation persons seeking or in need of international protection;
- Offers of resettlement places for refugees;
- Development of alternative safe and legal pathways for persons in need of international protection to reach safety;
- Enhanced legal migration channels in the region;
- Strengthened arrangements for the return of persons not in need of international protection;
- Information programmes in countries of origin, transit and destination to make people aware of migration options and potential dangers;
- Measures in countries of origin to address root causes of population movements through capacity building, livelihood opportunities, development assistance, and access to basic rights and services.

“ We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons. Such cooperation should also strengthen the resilience of communities hosting refugees, particularly in developing countries. ”

[UN General Assembly Resolution, “Transforming our world: the 2030 agenda for sustainable development”, 2015](#)

Mixed movements by sea

Across the globe, asylum-seekers, refugees and people on the move for many different reasons are undertaking journeys by sea that put their lives at risk. These typically involve human smugglers or traffickers who organize travel on unseaworthy, overcrowded vessels without skilled crew or navigation systems. On some routes, the majority of those on board may be refugees; on others, the majority may be people seeking better economic opportunity. The imperative of saving lives applies equally to all.

Deaths at sea can only be fully addressed through collective will and action based on agreed frameworks and established protection principles. UNHCR’s [Global Initiative on Protection at Sea](#), which underpinned the [High Commissioner’s 2014 Dialogue on Protection Challenges](#), aims to help States to reduce loss of life at sea; prevent exploitation, abuse and violence; and establish protection-sensitive responses. A strong consensus emerged from the Dialogue that unilateral action or action focused on deterrence would not be sufficient to address this phenomenon, and could in fact exacerbate the risks by leading smugglers and traffickers to opt for ever-more-dangerous routes and means of travel.

Rescue at sea: The obligations of ships' masters and governments

Search and rescue of people in distress at sea is a humanitarian act, a longstanding maritime tradition, and an international legal obligation. Rescue and disembarkation are complex operations involving a range of actors, each of whom has particular obligations under international maritime, refugee and human rights law. Even after passengers have been rescued, problems can arise securing the agreement of States to their disembarkation in a place of safety where they are not at risk of *refoulement*.

- **Ships' masters** are obliged to give assistance to persons in distress at sea without regard for their nationality, status, or the circumstances in which they are found.
- **Governments and rescue coordination centres** are obliged to coordinate and cooperate to ensure that masters of ships flying their flag give assistance to persons in distress at sea; to ensure that masters of ships that embark persons rescued at sea are released from their obligations with minimum further deviation from the ship's intended voyage; and to arrange disembarkation as soon as reasonably practicable.

These obligations are based on the [UN Convention on the Law of the Sea](#) (UNCLOS), the [International Convention for the Safety of Life at Sea](#) (SOLAS), and the [international Convention on Maritime Search and Rescue](#) (SAR), as well as States' *non-refoulement* responsibilities under international refugee and international human rights law.

Bearing in mind that those rescued may include asylum-seekers or refugees, care needs to be taken to ensure that:

- Disembarkation does not occur in a place where their lives or freedoms would be threatened or from where they might be returned to a territory where they risk persecution, torture, inhuman or degrading treatment or punishment; and
- Personal information regarding possible asylum-seekers or refugees rescued at sea is not shared with the authorities of their country of origin or any country from which they have fled and in which they claim a risk of harm, or with persons who may convey this information to the authorities of those countries. (For more on data protection principles and standards, see Chapter 7.4 – Ensuring confidentiality in line with relevant data protection principles and standards.)

State practice

Disembarkation of and assistance to persons rescued at sea – The authorities in **Tunisia** allow persons rescued at sea in the Mediterranean to be disembarked and assisted on Tunisian territory. UNHCR has worked with the Tunisian authorities, and local and international partners such as the Tunisian Red Crescent and the International Organization for Migration (IOM), to develop standard operating procedures (SOPs) to ensure an efficient response through better coordination and distribution of tasks among all actors. As a result, reception capacity has been improved and humanitarian assistance made more predictable. Persons rescued at sea are assisted according to their specific situation – whether as persons in need of international protection or migrants – and appropriate solutions are facilitated by the relevant organizations.

- ▶ [Rescue at sea: A guide to principles and practice as applied to refugees and migrants](#), UNHCR, International Maritime Organization and International Chamber of Shipping, 2015

Refugee story: Separated by the sea

In some ways, Kasim is a typical 17-year-old. His favourite article of clothing is his FC Barcelona jersey. He wants to be a doctor. He does not listen to his parents and even ran away from home. But the jersey is a donation.

As a Rohingya, Kasim was not allowed to attend high school and the home he ran away from was a refugee camp in Bangladesh, 1,900 kilometres away. It was his birthplace – Kasim has been a refugee his entire life.

Primary education was available in the camp, but schools there had only recently been permitted to extend their curriculum up to year eight. When Kasim finished primary school, refugees could not go to classes beyond year five. So he thought of other ways to get an education.

First, he pretended to be Bangladeshi, enrolling in a local high school for three years with some other refugee children. He was preparing to enter year nine when school administrators discovered Kasim was a refugee. He was expelled.

But Kasim was undeterred. “I decided that I’ll go to another country,” he recalls. “Maybe someone or some government will allow me to study.”

Kasim knew many other Rohingya who had paid smugglers to take them to Malaysia by boat, but his parents would not allow their only son to go. Desperate to study, Kasim defied them, leaving the camp one night without their knowledge. A smuggler offered to take him to Malaysia without any up-front payment and Kasim embarked on a small vessel, before boarding a larger boat that took him into Thai waters.

For nearly two months, he crouched shoulder to shoulder alongside hundreds of other passengers, with no toilet except for a couple of wooden planks held aloft over the sea by iron rods welded to the outside of the hull.

When smugglers abandoned their human cargo en masse, Kasim was transferred to a boat that was prevented from landing by authorities before a deadly fight for drinking water erupted, killing at least 13 people.

After the fight, Kasim was rescued by Indonesian fishermen and brought to a temporary shelter. He had given up everything – his home, his family and very nearly his life – for the chance of an education, but little had changed. He was still in a camp. He still had no school to go to. And he still wanted to be a doctor.

“Separated by the sea”, UNHCR, 2016

Interception at sea

A number of States employ extraterritorial actions to prevent unauthorized arrivals, and see the “high seas” as an area to which they can extend their border control measures. Interception at sea is employed by States to assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law. Such measures can also serve to protect the lives and safety of the passengers. By definition, interception at sea is difficult to monitor.

In many cases, interception at sea results in lower levels of protection of fundamental rights than would have been available, had the passengers been allowed to continue to their destination, in particular where asylum-seekers and refugees are involved. It is widely accepted that States are bound by their international human rights obligations wherever

and however they assert this jurisdiction. Indeed, the [European Court of Human Rights](#) has asserted that States must take affirmative measures to ensure that persons intercepted at sea have access to protection.

Numerous Conclusions of UNHCR's Executive Committee, including that quoted below, have attested to the overriding importance of the *non-refoulement* principle irrespective of the geographic location of the asylum-seeker or refugee.

“ Interception measures should not result in asylum-seekers and refugees being denied access to international protection, or result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention ground, or where the person has other grounds for protection based on international law.”

[UNHCR Executive Committee Conclusion No. 97 \(LIV\), Protection safeguards in interception measures, 2003](#)

- ▶ [Conclusion No. 97 \(LIV\) on Protection safeguards in interception measures](#), UNHCR Executive Committee, 2003
- ▶ [Guidelines on the treatment of persons rescued at sea](#), IMO, 2004
- ▶ [Principles relating to administrative procedures for disembarking persons rescued at sea](#), IMO, 2009
- ▶ [Global initiative on protection at sea](#), UNHCR, 2014
- ▶ Regional arrangements for cooperation and responsibility sharing following rescue operations could be based on the *Djibouti Model Regional Framework*, which provides a good model that can be adapted to different contexts. See [Refugees and asylum-seekers in distress at sea – How best to respond? Summary conclusions](#), UNHCR, 2011, p. 4 and Selected Tools and Frameworks.

Interception at sea: What to do?

When vessels presumed to be carrying asylum-seekers are intercepted, or where there are indications that those on board intend to apply for asylum or may be in need of international protection, they should have the opportunity to do so. More specifically:

- All intercepted persons should receive humane treatment and attention to their immediate needs;
- They should be swiftly and individually screened, in a process that they understand and in which they are able to explain their needs, so that the authorities are able to determine appropriate subsequent referral (for further details see Chapter 4.6 Protection-sensitive entry systems in mixed migration contexts, below);
- Such screening is best carried out on land, given safety concerns and other limitations of doing so at sea;
- If protection issues are raised by the individuals or if there is any indication that someone may be in need of international protection, their cases should be referred to the competent authorities and their claims properly determined in a substantive and fair refugee status determination procedure; and
- This remains the case even when bilateral or multilateral transfer arrangements are involved.

Checklist for parliamentarians:

Rescue at sea and interception

To ensure respect for international law in the context of rescue at sea and maritime interception, parliamentarians are encouraged to:

- ✔ Help to reduce loss of life at sea by supporting measures to strengthen regional and national search and rescue (SAR) capacities and coordination; by developing regional mechanisms to identify “safe places” to disembark those rescued; by ensuring that ship masters who undertake rescues are not penalized; and by ensuring that relevant national authorities implement international legal standards and guidance on SAR and disembarkation, as set out in the publications referred to above.
- ✔ Encourage regional burden-sharing between coastal and non-coastal States, including by supporting capacity building measures and allocating funding for reception arrangements in countries where persons rescued at sea are disembarked.
- ✔ Support the introduction and/or strengthening of measures to ensure that non-rescue-related interceptions at sea do not result in *refoulement*, do not prevent asylum-seekers and refugees from seeking protection, and do not shift burdens elsewhere or otherwise weaken international protection and responsibility sharing.
- ✔ Advocate for national responses to people arriving by sea (including those rescued or intercepted) to take international protection needs into account. This should include access to safe territory and protection from *refoulement*; humane treatment; prompt efforts to identify persons seeking protection or who have special needs, including refugees, asylum-seekers, stateless people, victims of trafficking, and unaccompanied or separated children; access to fair and efficient asylum procedures and the referral of persons with specific needs to processes or facilities providing appropriate care and protection.
- ✔ Advocate for initiatives that tackle the root causes of irregular movements by sea more broadly, through support for peace-building and development in countries of origin, by encouraging pathways for legal mobility and orderly entry, and by enhancing efforts to find durable solutions to protracted refugee situations.

Onward movement

Most refugees and asylum-seekers flee to and remain in countries near their own, but some move onward to States further afield, including in distant regions. There are often good reasons for such onward movement. These include limitations on the availability and standards of protection; lack of assistance or other means of survival and importantly, the lack of any prospect of a durable solution. There are also factors leading to onward movement including family separation and community links; lack of access to regular migration opportunities; and broader trends in irregular mixed movements, including the availability of well-established travel routes and smuggling networks.

In some cases, the risk of undertaking further, irregular travel is seen as lower than the risk of remaining in a first country of asylum. Refugees and asylum-seekers who move onward in this way frequently do so as part of wider migratory movements.

Refugee story: Between a rock and a hard place

Around Guled's stall they congregated – 10 young men all below the age of 25. They had either been born in Dadaab, the refugee camp in the desert of north-eastern Kenya, hosting 350,000 mainly Somali refugees, or they had arrived as small children.

Then somebody's phone rang. It was one of the group, their friend, a boy Guled had known when he had first arrived, who had left the camp about a year ago. Now he was calling with news: he was in Italy. The boys couldn't believe it. The phone was passed around and the boys took it in turns to feel envious and ashamed.

To one of them the boy in Italy described his difficult journey through the Sahara to Libya and over the sea. The boys knew it was dangerous and expensive. But they all wished they could afford to try; it was a dream for which they were only too willing to die.

There were plenty of stories of bad smugglers. Of kidnappings, of migrants held to ransom at each stage of the journey: in Sudan, in Libya. Of whole truckloads dying of dehydration in the desert, of drowning trying to cross the Mediterranean.

Twelve days later there was another explosion in the camp. Guled's face was drawn with worry.

The boys talked about a "deep fear" that was now spreading through the camp: Somalia was unsafe and so was Dadaab.

A few people had returned to Somalia, driven by the insecurity and the ration cuts in Dadaab due to limited funding. They saw this as a deliberate attempt to starve them into returning. Life was becoming too difficult. They were ready to take their chances back home.

But Guled's mind was racing away from him, over the globe. For several weeks they had eaten only sorghum. Tasteless porridge for breakfast and the same for dinner. Guled was thin. His stomach ached. Every day he gave his share of the food to his wife Maryam, who was pregnant, and their two kids.

Mogadishu was not an option for him, since he had escaped after being kidnapped from school by Al-Shabab. Even though, rationally, the odds of surviving and finding work were probably better in Mogadishu, the traumatic past, the perilous future, and the present humiliation of being unable to provide for his family were too much.

It was a risky and expensive thing to do but it at least had the virtue of action; it was something, a decision, an honourable effort, even if he died trying. "The life we are in today, it is better for me to die in the Sahara or in the sea", he said.

Based on *City of Thorns*, Ben Rawlence, 2016

Responding effectively to this phenomenon requires recognition of all of the factors at play and raises the question of where responsibility for protecting and assisting refugees lies at a time when the number of people fleeing conflict and violence is at a historic high. The majority of refugees are hosted by developing and middle-income countries. Increased engagement in these situations by international development and financial actors, including the World Bank and other institutions, can bolster opportunities for refugees and their host communities and reduce some of the drivers of onward movement.

► [Onward movement of asylum-seekers and refugees: Discussion paper prepared for the expert roundtable on onward movement](#), UNHCR, 2015

Checklist for parliamentarians: Onward movement

To ensure respect for international legal principles in relation to movement of refugees and asylum-seekers, parliamentarians are encouraged to:

- ✔ Advocate for regional and/or bilateral cooperation to respond to onward movements of refugees and asylum-seekers, whether specifically or as part of a broader approach to mixed migratory movements. Such cooperation can provide more consistent and coherent responses, help to share responsibilities more equitably, and provide a framework for addressing some of the root causes of onward movement.
- ✔ Advocate for more engagement in host countries by international development and financial actors, in recognition of the disproportionate responsibility for hosting refugees borne by developing and middle income countries. Include refugees in wider development strategies, so as to help strengthen refugee protection and solutions.
- ✔ Help to strengthen and harmonize protection capacity in host countries, including:
 - Develop and strengthen legislation, the rule of law, and institutions promoting security and respect for fundamental rights;
 - Strengthen host countries' ability to operate asylum systems that reflect international standards and good practice.
- ✔ Support the creation of safe and legal options for refugees to move onward, whether to reunite with family or to meet their protection and assistance needs, as an important step towards reducing irregular, hazardous journeys and the use of criminal smuggling networks.

4.5 Smuggling, trafficking and refugee protection

Closed borders, the absence of legal pathways to safety, and deteriorating security and humanitarian situations often compel refugees and asylum-seekers to turn to human smuggling networks. This can place them at increased risk of human rights violations, violence, exploitation, and even death. Asylum-seekers, refugees and stateless persons are also among those at particular risk of being trafficked for labor or sexual exploitation.

There are similarities and differences between trafficking in persons and smuggling of migrants. Both often take place in dangerous and/or degrading conditions involving human rights abuses. Being smuggled is, however, essentially a voluntary act involving the payment of a fee to the smuggler to provide a specific service. By contrast, victims of trafficking have been forced, threatened or deceived for the purposes of exploitation, which includes serious and ongoing abuses of their human rights at the hands of their traffickers.

Smuggling and trafficking networks are often closely related; both prey on the vulnerabilities of people seeking international protection or access to labour markets abroad. Irregular migrants relying on the services of smugglers whom they have willingly engaged may also end up as victims of trafficking.

Smuggling and trafficking: What is the difference?

The [UN Convention against Transnational Organized Crime](#) has two Protocols on the smuggling of migrants and on trafficking in persons. They define the terms as follows:

- [Smuggling of migrants](#): “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.” The critical ingredients of this definition are the illegal border crossing by the smuggled person and the receipt of a material benefit by the smuggler.
- [Trafficking in persons](#): “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.” Exploitation includes sexual exploitation, including prostitution, forced labour, slavery, servitude and the removal of organs. The consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means set out above has been used. In the case of children, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered “trafficking in persons” even if threat of force or coercion has not been used.

Both Protocols:

- Require States parties to criminalize the relevant conduct of smugglers or traffickers, to establish and implement domestic law enforcement mechanisms, and to cooperate with other States to strengthen prevention and punishment of these activities; and
- Stipulate that nothing in their provisions affects the rights of individuals and the obligations of States under the 1951 Convention/1967 Protocol or the principle of *non-refoulement*.

The [Protocol against the Smuggling of Migrants by Land, Sea and Air](#) acknowledges that the “smuggling of migrants can endanger the lives or security of the migrants involved”. It requires States to “ensure the safety and humane treatment” of those who have been smuggled and to provide them with “full protection of their rights”.

As for victims of trafficking, the [Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children](#) encourages States to take steps “to provide for the physical, psychological, and social recovery of victims of trafficking” and sets out a broad range of protective measures. While many victims of trafficking will be able to return to their home countries, some may be in need of international protection.

“ The 118th Assembly of the Inter-Parliamentary Union, ...Reminds governments and parliaments of their obligation under international human rights law to protect victims of trafficking, including through the effective identification of victims and observation of the principle of *non-refoulement*, with protection from summary deportation and the granting of reflection periods and/or temporary or permanent residence permits;”

Refugee story: Rough crossing

As he stepped onto a boat on the Indonesia coast, Barat Ali Batoor knew he might not survive the voyage to Australia. But it was a risk he says he had to take.

“It was not an easy decision for me,” says Batoor, 31, who proved luckier than many who brave the high seas in search of asylum or opportunity. “There was a 90 per cent chance of dying there in the sea. I was taking the risk. But it was just for that tiny bit of the hope. Because we didn’t have that hope back home.”

Batoor’s family are Hazaras, a Persian-speaking minority who have endured persecution in Afghanistan and Pakistan. His work as a photojournalist put him at even greater risk, ultimately compelling him to take his chances at sea.

He embarked on the journey, describing the reasons as “very simple”. “I didn’t have any other choice. Legal things are not possible. Afghani passport is not reliable anywhere. ... There was not any other option for me except the smuggler – to pay them and to take the illegal route.”

Batoor was born and raised in Pakistan, but moved to Afghanistan as a young adult hoping to help rebuild the country. He found work as an interpreter and photographer for the United Nations, the US Embassy and several European news organizations. When one of his photo essays was published in 2012, he says he began to receive death threats and realized he had to go.

Batoor went back to Pakistan, but as a Hazara did not feel any safer there. “I could be killed any time,” he says, so he paid smugglers to get him to Thailand, Malaysia, Indonesia, and finally the

boat to Australia. He hoped it would land him in a place where “I can live in peace.”

“The first day and night we were hopeful that we would make it, but the second night, the weather turned and the water got rougher. The water was coming in, the waves were high and the boat felt really weightless. Like a matchbox in that water.”

Passengers began to cry and pray. “We really did not have any more hope. We, everyone, 93 people, we thought that this is the end. And we could see our death just riding from the point in front of us. We could not see anything else, it was just those high waves. It was a really lost hope.”

All 93 were lucky to survive. “We were really fortunate that we could make it back. After travelling six hours – six hours with a leaky boat, baling water – we made it. It looks just like a dream now for me. I still don’t believe how we made it back.”

The boat crashed onto rocks on a small island off the coast of Java and everyone on board swam to shore. The asylum-seekers were then arrested by Indonesian police and taken to a detention centre. They all escaped on the first night.

A traumatized Batoor waited in Jakarta for his claim for refugee status to be processed by UNHCR. When a war photographer he had worked with in Afghanistan sponsored him, Batoor was able to resettle in Australia.

Communicating the stories of asylum-seekers and refugees has now become his life’s journey. “I have peace, I have opportunity, I have almost everything,” Batoor says. “But I feel the responsibility that I have to fight for them.”

“[Rough crossing](#),” UNHCR, 2014

“ Recognizes the clear obligation of the competent authorities to provide all necessary measures of protection for victims of trafficking and to ensure that such measures are easily accessible; if there are reasonable grounds to believe that a person is a trafficking victim, to refrain from deporting them until the identification process is complete, and to deport them only if repatriation is appropriate; and if the age of the victim is uncertain, to proceed on the assumption that he or she is a child.”

[Migrant workers, people trafficking, xenophobia and human rights, Resolution adopted by consensus by the 118th IPU Assembly, Cape Town, 2008](#)

State practice

Anti-trafficking legislation: While there is no requirement for anti-trafficking legislation to specify that the principle of *non-refoulement* applies and that victims of trafficking should be able to seek and enjoy asylum, this is good practice and these obligations are specifically referred to in the legislation of a number of countries.

In Africa, for instance, anti-trafficking legislation in [Senegal](#) specifies that victims of trafficking may apply to remain on the territory temporarily or permanently with the status of resident or refugee. [Lesotho](#), [Mauritius](#), [Mozambique](#), [South Africa](#), [Tanzania](#) and [Zambia](#) are among the countries with anti-trafficking legislation requiring the relevant minister, when seeking to repatriate foreign victims of trafficking, to give due consideration to their safety in the country of origin and during the process of repatriation, including the possibility that they may be harmed, killed or trafficked again.

In the Americas, anti-trafficking legislation in [Argentina](#) specifically refers to the country's obligations under the 1951 Convention and its *non-refoulement* obligations, while that in [Guatemala](#) states that, without prejudice to the process of repatriation, the authorities must guarantee the right to asylum of foreign victims of trafficking.

In Europe, an anti-trafficking regulation in [Kosovo](#) specifies that nothing in the regulation shall affect the protection afforded to refugees and asylum-seekers under international refugee law and international human rights law, in particular, under the principle of *non-refoulement*. In [Moldova](#), anti-trafficking legislation states a victim of trafficking may not be repatriated or expelled to his or her country of origin or to a third state if, upon assessing the risk and safety, reasons are found to presume that his or her safety or that of family members will be endangered.

State practice

Joint strategy to address trafficking: In May 2015, **Sudan** endorsed the 2015–2017 Joint UN Strategy to Address Human Trafficking, Kidnappings and Smuggling of Persons in Sudan. This provides a framework for action, encompassing prevention, identification of, and assistance and protection for victims of trafficking. Refugees and asylum-seekers are among the vulnerable populations in Sudan at risk of trafficking, kidnapping and smuggling who may benefit from the strategy, which also focuses on legal alternatives to onward movement, such as self-reliance programmes, private sponsorship for resettlement, and family reunification.

Checklist for parliamentarians:

Smuggling, trafficking and refugee protection

To seek to address the criminal phenomena of smuggling and trafficking in human beings in ways that are consistent with international law, parliamentarians are encouraged to:

- ✔ Distinguish between smuggling of migrants and trafficking in persons, and encourage use of the correct terms, as different obligations and policy responses apply.
- ✔ When supporting legislation that criminalizes the actions of smugglers and traffickers and measures to bring them to justice, ensure that victims are not criminalized.
- ✔ Ensure that foreign victims of trafficking are informed of their right to seek and enjoy asylum if they fear return to their country of origin, without linking this to cooperation with criminal prosecution measures. Similarly, avoid any linkage between the evaluation of the merits of an asylum claim and the willingness of the

victim to give evidence in legal proceedings against an alleged trafficker.

- ✔ Ensure that provisions in legislation regarding the repatriation of foreign victims of trafficking respect the principle of *non-refoulement* and are implemented in practice.
- ✔ Advocate to ensure that national authorities involved in identifying victims of trafficking and providing them with physical, psychological and social support are trained in, and aware of, the potential international protection needs of victims, and that these authorities enable victims to lodge and pursue a refugee claim if there may be international protection needs.

For more on victims of trafficking who may qualify for refugee status see Chapter 6.4 – The refugee definition: Are they entitled to refugee status? Some age and gender cases

Regional practice

The right of victims of trafficking to seek and enjoy asylum: In Europe, the [Council of Europe Convention on Action Against Trafficking in Human Beings](#) specifies that the grant of a residence permit to a victim of trafficking “shall be without prejudice to the right to seek and enjoy asylum” and that nothing in the Convention “shall affect the rights, obligations and responsibilities of States and individuals ... in particular, where applicable, the 1951 Convention and 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein”. In the **European Union**, the 2011 [Directive on preventing and combating trafficking in human beings and protecting its victims](#) states that its provisions are “without prejudice to the principle of *non-refoulement* in accordance with the 1951 Convention” and requires States to provide victims of trafficking with information about the possibility of receiving international protection as either a refugee or beneficiary of complementary protection.

- ▶ [Combating trafficking in persons: A handbook for parliamentarians](#), No. 16, IPU, UN Office on Drugs and Crime and UN Global Initiative to Fight Human Trafficking, 2009

4.6 Protection-sensitive entry systems in mixed migration contexts

When considering legislation and policies to address irregular arrivals, it is important to recognize that irregular migratory movements may include refugees, asylum-seekers and others with specific protection needs, such as trafficked persons, stateless persons and unaccompanied or separated children.

Governments may adopt a range of legitimate measures to prevent and respond to irregular migration, but these need to be framed and implemented in a way that:

- Ensures that all persons, irrespective of their legal status, are treated with dignity and respect for their fundamental rights;
- Enables asylum-seekers to secure admission to territory and to have access to fair and effective asylum procedures;
- Allows the vulnerabilities and specific needs of all individuals to be identified promptly; and
- Identifies persons who do not have protection needs and can be returned.

Such mechanisms can support the early identification of individuals who may constitute a security risk, so that the latter can be referred to appropriate law enforcement authorities.

Access to territory for persons in need of international protection can also be facilitated by providing **legal avenues to safety and protection**. Admission programmes for such persons include issuing humanitarian visas allowing them to travel to a third country for the purpose of applying for asylum, the evacuation of refugees with urgent medical needs for treatment in a third country; admission of relatives of persons already residing in a third country through facilitated and streamlined family reunification procedures; private sponsorship for resettlement; and the provision of academic scholarships to student refugees. (See also Chapter 9.7 – New approaches and other outcomes.)

Basic elements of protection-sensitive entry systems

Protection-sensitive entry systems involve:

- Mechanisms to screen irregular arrivals, and to assist entry officials in identifying asylum-seekers and others with specific needs and referring them to the responsible authorities;
- Measures to ensure that (first contact) entry officials such as border police, immigration officials (including out-posted immigration and airline liaison officers), and coastguard personnel are aware of the State's protection obligations;
- Regular and on-going training for entry officials to ensure awareness and understanding of relevant laws, regulations, guidelines, procedures, and responsibilities;
- Making sure that restrictions regarding admission are applied in a non-discriminatory way and do not operate for instance solely on the basis of a person's nationality, religion, ethnicity, or health status;
- Including transportation companies (carriers) and other private actors in the protection strategy;
- Cross-border cooperation on protection, including in the context of rescue-at-sea operations; and
- Provisions for independent monitoring.

The IPU Assembly

“ Calls on parliaments and governments to open borders based firmly on values such as the rule of law, democracy, respect for human rights and international conventions, especially when so many victims are children, and to find a way to combine respect for border protection and the right to seek asylum.”

[Resolution on the role of parliaments in protecting the rights of children, in particular unaccompanied migrant children, and in preventing their exploitation in situations of armed conflict, 130th IPU Assembly, Geneva, 2014](#)

A number of elements that need to be in place to ensure protection-sensitive programmes are outlined briefly below:

- Screening of irregular arrivals to identify those in need of protection (including international protection), those with other specific needs, possible security concerns and referral to relevant services;
- The best interests of children in mixed migratory movements; and
- Minimum safeguards for asylum-seekers at borders.

Screening of irregular arrivals to identify specific needs and refer to relevant services

As part an effective and protection-sensitive response to mixed movements of migrants and refugees, parliamentarians may find it useful to support the inclusion in legislation and implementing regulations or policies, of mechanisms to profile or screen persons upon arrival, especially when large groups arrive at borders.

Such mechanisms can help to identify persons towards whom States may have protection obligations as well as others with specific needs, so as to be able to direct them to appropriate channels for assessment of their asylum claim or other support. These mechanisms may also facilitate the early identification of persons who may pose a security risk.

Profiling/screening refers in this context to a non-binding process that **precedes** any formal status determination procedure and aims to differentiate between categories of persons who are travelling as part of mixed migratory movements, including asylum-seekers. It is a case management tool, rather than a substantive procedure to determine the person's rights or status with legally binding outcomes.

Profiling/screening supports the provision of assistance and protection adapted to the situation of the individuals concerned. It enables persons with specific needs to be identified rapidly and provided with the required assistance and continued regular monitoring. For profiling/screening to work smoothly, provision should be made for interpretation, child-friendly spaces, privacy, and confidentiality. Information needs to be provided in a language and a format that the individual understands.

By establishing a rights-based approach to screening, States can reduce protection gaps, especially concerning individuals who fall outside established protection frameworks, but who otherwise need humanitarian assistance or other kinds of support. (For more on the specific needs of asylum-seekers in the reception context, see Chapter 5.2 – Reception and treatment of asylum-seekers.)

Profiling/screening processes can thus:

- Identify the profile of persons arriving and the appropriate response for each person;
- Promptly identify vulnerable persons with specific needs (see box below) and refer them to relevant channels;
- Allow the authorities to provide information to asylum-seekers about their rights and obligations;
- Allow States to gather information from individuals, subject to confidentiality and protection of data, to help improve responses to mixed movements more generally; and
- Facilitate earlier identification of individuals who may constitute a security risk and their referral to appropriate law enforcement authorities (see also Chapter 4.3 Addressing security concerns without undermining refugee protection).

Persons with specific needs among irregular arrivals: Who are they?

Persons who may be at heightened risk include:

- Refugees, asylum-seekers and other individuals fearing return to their country of origin or an intermediate country;
- Stateless persons;
- Unaccompanied or separated children (including adolescents);
- Accompanied children or adolescents in vulnerable situations, such as those subject to exploitation or violence, pregnant girls and adolescents;
- Victims or potential victims of human trafficking;
- Victims/survivors of exploitation and abuse in the context of migrant smuggling;
- Victims/survivors of sexual and gender-based violence (SGBV) whether in the country of origin or en route or at risk of such violence;
- Traumatized persons;
- Members of ethnic and religious minorities;
- Indigenous peoples;
- Pregnant or lactating women;
- Single parents with minor children;
- Older persons;
- Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; and
- Persons with disabilities.

Individuals may fall into more than one of these categories, thus requiring coordinated responses from several services and agencies.

Given the range of responses that may be needed, effective and regular communication between agencies to which individuals may be referred needs to be assured and monitored on an ongoing basis, as does training of the officials involved.



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State practice

[Guidelines on assistance for vulnerable migrants](#) in **Zambia** set out procedures for identifying vulnerable migrants and asylum-seekers. The guidance is directed at “first contact” personnel, such as immigration officials, police officers, social welfare, health and prison officers and civil society personnel. A “migrant profiling form” used during the initial interview helps identify whether the individual falls in one of the following categories: asylum-seeker, victim of trafficking, unaccompanied or separated child (UASC), stranded migrant, stateless person or other vulnerable migrant. Referral to actors providing protection services and various legal processes is on a case-by-case basis.

Regional practice

Americas – [Regional guidelines for the preliminary identification of profiles and referring mechanisms for migrant populations in vulnerable situations](#). At a conference in Costa Rica in 2013, the Regional Conference on Migration (RCM), an inter-governmental forum of 11 countries in North and Central America to share information and promote dialogue on migration, agreed on these Guidelines. They outline steps to be taken by each key actor to identify and refer vulnerable individuals, according to specific conditions of vulnerability associated with different migrant groups. They form part of an approach to migration management that aims to take into account the sovereignty of States as well as to safeguard the basic human rights of migrants and refugees, including their integrity, safety, dignity, and wellbeing.

- ▶ [Access to the asylum procedure: Practical tools for first-contact officials](#), European Asylum Support Office (EASO), 2014
- ▶ [Vulnerability screening tool – Identifying and addressing vulnerability: A tool for asylum and migration systems](#), UNHCR, 2016

The best interests of children in mixed migratory movements

Article 3(1) of the [Convention on the Rights of the Child](#) provides that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

State practice

Legislation protecting asylum-seeking children: The [General Law on the rights of children and adolescents](#), adopted in **Mexico** in 2014, contains special measures to ensure the protection of unaccompanied and accompanied children seeking asylum. It prohibits the return in any manner whatsoever of a child or adolescent to a country where his or her life, security or liberty would be endangered or to a risk of persecution, generalized violence, massive human rights violations, torture or inhuman or degrading treatment. In addition to affirming core principles to be respected, such as the best interest of the child and family unity, the law sets out mechanisms to be put in place for the initial identification and evaluation of children and adolescents who may be refugees and for the adoption of appropriate individualized protection measures, the cooperation needed between authorities, and the data to be recorded.

The best interests of the child in mixed migratory movements: How to respect them?

The best interests principle should be applied in all actions affecting children. This includes the growing number of children, including unaccompanied and separated children, arriving within large-scale, irregular, mixed migratory flows.

Recognizing that it may not be possible to carry out some actions on arrival, such as conducting age assessments or appointing a guardian, in order to respect the best interests of the child, priority should be given to:

- Conducting profiling/screening of persons arriving so that unaccompanied and separated children can be promptly identified, applying a presumption of minority until the outcome of any age assessment procedure, if one is necessary;
- Separating those who appear to be under age from adults who are unrelated to them to reduce the risk of (onward) human trafficking and/or other possible forms of abuse;
- Ensuring referral to a facility able to provide temporary shelter and basic medical and other care and assistance;
- Registering basic bio data of the child and of family members or relatives who have been left behind or who may be in another State, with whom the child wishes to be reunited and ensuring referral to family tracing services where needed;
- Providing basic information and counselling in a child-friendly way and in a language that the child can understand on the asylum procedure and/or (where relevant) on procedures for victims of trafficking as well as other options, including voluntary return;
- Ensuring referral to mainstream child protection services as well as to specialist services including psychosocial counselling as may be required; and
- Ensuring access to education as soon as reasonably possible.

Minimum safeguards for asylum-seekers at borders: What are these?

When persons seeking entry express a fear of return to their country of origin, they should be admitted and given access to the asylum procedure, without discrimination. Minimum safeguards identified by UNHCR's Executive Committee in its [Conclusion No. 8](#) include:

- "The competent official ... to whom the applicant addresses himself at the border ... should have clear instructions for dealing with cases which might be within the purview of the relevant international instruments. He [or she] should be required to act in accordance with the principle of *non-refoulement* and to refer such cases to a higher authority.
- "The applicant should receive the necessary guidance as to the procedure to be followed ...
- "The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his [or her] case to the authorities concerned.
- "Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
- "The applicant should be permitted to remain in the country pending a decision on his [or her] initial request by the competent authority."

These safeguards are particularly important when asylum is requested **at the border, including in international zones at airports**. Asylum-seekers in such situations are particularly vulnerable, since border procedures often operate outside public scrutiny. In addition, being detained at the border can make it difficult for asylum-seekers to obtain appropriate information and advice and can make it hard for them to explain their need for international protection. The reception and procedural arrangements at the border often lack fundamental safeguards.

State practice

Statutory guidance on the care of asylum-seeking unaccompanied children: In the United Kingdom, the Home Office and other government departments issued statutory guidance in 2009 entitled [Every child matters: Change for children](#). This sets out the arrangements that must be made to safeguard and promote children's welfare in the immigration and asylum context, including the referral and hearing requirements for safeguarding children's procedural and substantive rights. In 2014, [statutory guidance](#) was also issued for local authorities regarding the steps they should take to provide support for unaccompanied asylum-seeking children and child victims of trafficking.

Minimum safeguards for asylum-seekers at borders

Decisions taken at the border on whether to admit someone to the territory and to the asylum procedure are often made within very short time frames. It is important that appropriate safeguards and supports are in place.

- ▶ [Refugee protection and mixed migration: A 10-point plan of action](#), UNHCR, 2016
- ▶ [Refugee protection and mixed migration: The 10-point plan in action](#), UNHCR, 2016
- ▶ [Legal avenues to safety and protection through other forms of admission](#), UNHCR, 2014
- ▶ [Recommended principles and guidelines on human rights at international borders](#), OHCHR, 2014

Checklist for parliamentarians:

Protection-sensitive entry systems

Parliamentarians are encouraged to support the development and use of protection-sensitive entry systems in the following ways:

- ✔ Support and ensure the inclusion in law, policy and practice of screening mechanisms for irregular movers to assist entry officials in identifying asylum-seekers and others with specific needs and refer them to the responsible authorities, as well as to identify potential security risks and concerns and refer these to appropriate law enforcement authorities.
- ✔ Advocate for and support regulations, policies and/or strategies concerning entry systems that:
 - Set out the underlying principles that need to be respected throughout, including i.a. *non-refoulement*, non-discrimination, respect for human rights and human dignity, non-penalization for illegal entry of asylum-seekers and refugees, and access to asylum procedures for persons fearing return to their country of origin;
 - Identify which authorities are involved and allocate responsibilities as relevant, including child protection and guardianship services, immigration and asylum authorities, the authority responsible for determining statelessness (if one exists), the authority responsible for combatting trafficking in human beings, and health services;
- Set out procedures to determine what is the appropriate line of onward referral depending on the situation of the person concerned, so that assistance, protection and a decision on his or her status can be provided;
- Identify other relevant actors that may be involved, including UNHCR, IOM, national NGOs or other bodies;
- Set out how the different actors involved should coordinate, implement and monitor responses to ensure regular communication, coordinated responses and accountability;
- Ensure that responses are adapted to different entry situations such as seaports, airports, including transit zones, land borders, and encounters beyond national borders; and
- Allocate sufficient resources for these mechanisms to function effectively, including for the training of officials and for interpretation and counselling as needed.

4.7 Non-penalization for irregular entry

It is not a crime to cross a border without authorization to seek asylum. Article 31 of the 1951 Convention provides that refugees coming directly from a country where their life or freedom is threatened shall not be punished because of their illegal entry or presence, as long as they are coming directly from that country, present themselves without delay to the authorities, and show good cause for their illegal entry or presence. This provision recognizes the realities of refugee flight. Refugees are often compelled to arrive at, or enter, a territory without the requisite documents or prior authorization. Article 31 also applies to asylum-seekers, since some of them are refugees who have not yet been recognized as such.

UNHCR's Executive Committee has affirmed that in view of the hardship it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim

Asylum-seekers who have entered irregularly: What the 1951 Convention has to say

Article 31 of the 1951 Convention states:

"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

"The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country..."

"Coming directly"

This means the asylum-seeker/refugee arrived directly from:

- His or her home country;

- From another country where his or her protection, safety and security could not be assured; or
- A transit country where he or she was present for a short period of time without having applied for or received asylum there.

The term "coming directly" should be understood not in a narrow temporal or geographical sense and no strict time limit for passage through or stopping in another country can be applied. Article 31 thus applies to persons who have transited other countries or who are unable to find protection in the country or countries to which they previously fled.

"Without delay"

Similarly, there is no limit that can be mechanically applied to the concept of "without delay". This is because asylum-seekers are often coping with problems including the effects of trauma, language barriers, lack of information, fear or suspicion of authorities based on their past experiences, and lack of basic means of subsistence.

"Good cause"

This phrase requires consideration of the circumstances under which the asylum-seeker fled.

asylum; or to protect national security or public order. Irregular entry is not included among these criteria. (For more on detention and alternatives to detention see Chapter 5.3 – Freedom of movement, detention and alternatives to detention.)

In addition, while States have a duty to criminalize smuggling under Article 6 of the [Smuggling Protocol](#), Article 16 of the Protocol requires States to take all appropriate measures to preserve and protect the rights of persons who have been smuggled consistent with their obligations under international law. (See also Chapter 4.5 Smuggling, trafficking and refugee protection, above.)

State practice

Legislation on non-penalization for irregular entry: Legislation in numerous countries states that asylum-seekers should not be penalized on account of their irregular entry. Among these are: [Argentina](#), [Armenia](#), [Belarus](#), [Bolivia](#), [Bosnia and Herzegovina](#), [Brazil](#), [Chile](#), [Costa Rica](#), [Croatia](#), [Ecuador](#), [Gambia](#), [Guatemala](#), [Honduras](#), [Mexico](#), [Moldova](#), [Montenegro](#), [Nicaragua](#), [Panama](#), [Peru](#), [Philippines](#), [Sierra Leone](#), [Slovenia](#), [Turkey](#), [Uruguay](#), and [Venezuela](#).

Checklist for parliamentarians:

Non-penalization for irregular entry

To ensure respect for the 1951 Refugee Convention rules on non-penalization, parliamentarians are encouraged to

- ✔ Ensure that legislation states clearly that penalties shall not be imposed on refugees on account of their illegal entry or presence, when they come directly from a territory where their life of freedom was threatened, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
- ✔ Advocate for the inclusion in criminal legislation of provisions that bar the institution or continuation of legal proceedings for irregular entry or stay against individuals who have applied for asylum, until the final outcome of the asylum claim, referring to relevant immigration/ asylum law provisions to ensure consistency.
- ✔ Ensure that legislation does not criminalize asylum-seekers or provide for their detention if, for valid reasons, they do not collaborate in identifying smugglers, in line with the non-penalization clauses of the 1951 Convention and the Smuggling Protocol.

Chapter 5

Receiving asylum-seekers and refugees



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5.1 Introduction

States receiving persons who are seeking protection face many challenges, whether in the context of individual arrivals or in mass influx situations, in industrialized or developing countries, in rural or in urban areas. Respecting the right to seek and enjoy asylum involves establishing reception arrangements that are open, safe, and compatible with basic human rights.

National capacities can be overwhelmed by large influxes. International cooperation to share the burden can assist the host State(s), reduce the dangers to which new arrivals are exposed, and enhance their protection. Measures to ensure the civilian and humanitarian character of asylum are essential.

Reception in the community or in open facilities should be the norm. Closed facilities, which amount to detention, should only be used as a last resort, and alternatives should always be considered. Where asylum-seekers are detained, this must be on the basis of an individualized determination of its necessity, reasonableness, and proportionality to a legitimate purpose, both initially and over time.

This chapter provides guidance on developing national laws and policies to address these challenges, including on:

- Ensuring open, safe and dignified reception and treatment of people seeking protection, including registration, identification of specific needs, and access to services and to employment;
- Freedom of movement, detention and alternatives to detention; and
- Responding to mass influxes and emergencies.

5.2 Reception and treatment of asylum-seekers in the context of individual asylum systems

International human rights law recognizes the right of everyone to an adequate standard of living. The extent of State assistance to asylum-seekers who are not able to provide for themselves will depend on the context. In general, however, adequate reception conditions are a necessary component of fair and efficient asylum procedures. Asylum-seekers whose basic needs for food, shelter and medical care are not met cannot be expected to pursue their asylum applications properly.

The 1951 Convention/1967 Protocol do not set out standards for the reception of asylum-seekers, but some of the Convention rights clearly apply to them, including the right to non-discrimination, freedom of religion, access to courts, education, the right to an identity document, and to protection from arbitrary detention and from punishment for irregular entry. (See also Chapters 4.7 – Non-penalization for irregular entry, and 8.3 –The obligations and rights of refugees.) UNHCR's Executive Committee has set out general considerations to guide reception arrangements in its [Conclusion No. 93 \(LIII\) on reception of asylum-seekers in the context of individual asylum systems](#).

Countries adopt different approaches to the reception of asylum-seekers in the context of individual asylum systems. Some provide assistance in kind, others offer financial assistance, or a combination of both. Both governmental and non-governmental actors may be involved in providing assistance, and the range and scope of social and economic benefits may vary.

In some contexts, asylum-seekers' choice of residence and freedom of movement are limited to designated locations, for instance to a specific municipality or a particular reception facility. Any such restrictions must have a basis in law, and be necessary to protect a legitimate interest, such as public security, public order, or public health. Reception centres should not be closed, as this would amount to detention.

Reception: Guiding principles

UNHCR's Executive Committee [Conclusion No. 93 \(LIII\) on reception of asylum-seekers in the context of individual asylum systems](#) sets out principles to guide reception arrangements. These include:

- Respect for the dignity of asylum-seekers and international human rights law and standards;
- Asylum-seekers should have access to assistance to meet their basic needs, including food, clothing, accommodation, and medical care, with due respect for their privacy;
- Incorporation of gender and age-sensitivity in reception arrangements, addressing in particular the specific needs of children, especially unaccompanied and separated children; victims of sexual abuse and exploitation; victims of trauma and torture; as well as of other vulnerable groups;
- Respect for the unity of the family as present within the territory;
- Registration of both male and female asylum-seekers and their issuance with appropriate documentation that reflects their status as asylum-seekers and remains valid until a final decision is taken on their asylum application;
- Acknowledgment that many asylum-seekers can attain a certain degree of self-reliance, if given the opportunity; and
- Asylum-seekers' entitlement to have access to UNHCR and UNHCR's access to asylum-seekers.

Housing asylum-seekers in collective centres during the initial months following their arrival can facilitate efficient dissemination of information and advice. At later stages, smaller-scale or individual accommodation is often more suitable, as prolonged periods of stay in collective centres can lead to marginalization and dependency. Asylum-seekers who have the opportunity to stay privately with relatives or friends should not be required to live in collective accommodation centres.

Whatever approach is adopted or assistance provided, it is important to offer a safe and dignified environment consistent with international human rights standards, in particular to allow asylum-seekers an adequate standard of living, including food, clothing and housing. People with specific needs (such as pregnant women, children, survivors of torture and traumatized persons) require appropriate assistance, as outlined below.

Where resources are limited, support from the international community can strengthen the host State's capacity to receive asylum-seekers and to provide adequate reception arrangements.

- ▶ [Conclusion on reception of asylum-seekers in the context of individual asylum systems, No. 93 \(LIII\)](#), UNHCR Executive Committee, 2002
- ▶ [Global consultations on international protection/Third track: Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems](#), UNHCR, 2001
- ▶ [UNHCR annotated comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\)](#), UNHCR, 2015

Registration and identification of asylum-seekers

Registration and the provision of personal documentation to asylum-seekers are important protection tools. By providing proof of identity and status, registration and documentation help to ensure protection from *refoulement*.

Registration also helps to ensure access to other basic rights and services, and an opportunity to identify persons with specific needs. It is also necessary for the development and implementation of durable solutions, including resettlement.

Legislation should therefore designate an authority to receive and register asylum claims. The authority needs to have clear instructions about its responsibilities, and should have designated personnel not only at land borders but also at airports, seaports and train stations, as well as in various local government departments/agencies.

Asylum-seekers should be given a document attesting to their identity and to the fact that they are seeking asylum. This will serve as proof of legal residence until a final decision on their request has been made. Women have equal rights to such documentation in their own name, independent of any male relatives. Registration of children, especially unaccompanied and separated children, and their provision with individual documentation showing their status, is important to their protection.

Registration: Guiding principles

In its [Conclusion No. 91 \(LI\) on the registration of refugees and asylum-seekers](#), UNHCR's Executive Committee sets out the following guiding considerations:

- Registration should be a continuing process, to record essential information at the time of arrival as well as any subsequent changes (such as births, deaths, departures, cessation of refugee status, acquisition of a specific status, naturalization, etc.);
- The registration process should abide by fundamental principles of confidentiality;
- The registration process should to the extent possible be easily accessible, and take place in a safe and secure location;
- Registration should be conducted in a non-intimidating, non-threatening and impartial manner, with due respect for the safety and dignity of refugees;
- Personnel conducting the registration should be adequately trained, should include a sufficient number of female staff and should have clear instructions on the procedures and requirements for registration, including the need for confidentiality of information collected;
- Special measures should be taken to ensure the integrity of the registration process;
- In principle, refugees should be registered on an individual basis with the following basic information being recorded: identity document and number, photograph, name, sex, date of birth (or age), marital status, special protection and assistance needs, level of education, occupation (skills), household (family) size and composition, date of arrival, current location and place of origin.

Reception arrangements for persons with specific needs: What to do?

Early response measures taken at the border need to be followed up in the context of reception by more formal mechanisms to identify individuals at risk and to implement the appropriate responses. This may include:

- Providing information, counselling, medical and psychosocial care;
- Carrying out age assessments if a child's age is in doubt, and it is in the child's best interests. Age assessments should be conducted in a fair, child- and gender-sensitive manner, with due respect for human dignity. If the outcome is inconclusive, the applicant should be considered to be a child;
- Making sure that a guardian or adviser is appointed when an unaccompanied or separated child is identified;
- Determining the accommodation arrangement that is in the best interests of girls and boys at risk;
- Supporting family tracing and reunification when possible and in the child's best interests;
- Providing sustainable and appropriate support to persons with disabilities and isolated older persons, paying particular attention to those who cannot communicate their own needs; and
- Ensuring that individuals with specific needs have access to asylum procedures that are sensitive to these needs.

Asylum-seekers with specific needs

There are a number of categories of persons with specific needs for whom adapted responses in the reception context are called for. These include: children, including unaccompanied and separated children; women and girls at risk; victims/survivors of torture, abuse and sexual and gender-based violence; victims or potential victims of trafficking; traumatized persons; lesbian, gay, bisexual, transgender or intersex (LGBTI) persons; ethnic and religious minorities and indigenous persons; persons with disabilities; and older persons. On the identification and referral of at-risk individuals among mixed arrivals see Chapter 4.6 – Protection-sensitive entry systems in mixed migration contexts.

- ▶ More detailed measures are set out in UNHCR's Executive Committee [Conclusions No. 105 \(LVII\) on women and girls at risk](#), [No. 107 \(LVIII\) on children at risk](#), and [No. 110 \(LXI\) on refugees with disabilities](#). For more information on these three Conclusions see Chapter 2.3 – Responsibilities towards particular categories of asylum-seekers and refugees.
- ▶ [Tool for identification of persons with special needs](#), EASO, 2016

Access to health care for asylum-seekers

Like any other individual, asylum-seekers are entitled to benefit from the right “to the enjoyment of the highest attainable standard of physical and mental health” set out in the [International Covenant on Social, Economic and Cultural Rights](#). States therefore need at least to ensure asylum-seekers have access to free primary and emergency medical care, both on arrival and throughout the asylum procedure. Where States have difficulty in providing these services, assistance can be sought from the international community, and in many cases can be extended to nationals of the host country as well.

As a result of exposure to persecution and violence in the country of origin or during flight, asylum-seekers may have physical or mental health problems. Survivors of torture or persons suffering from trauma should have access to appropriate treatment free of charge, including psychological care and counselling.

The [Committee on Economic, Social and Cultural Rights](#) has underlined that States must refrain from discriminatory practices with respect to access to health services, whether preventive, curative or palliative. Asylum-seekers should thus not be denied access to services. The Committee draws particular attention to women’s health. Asylum-seeking women and girls require appropriate attention and care, as do asylum-seekers living with HIV and AIDS. Where medical screening is foreseen, mandatory HIV/AIDS tests should, in UNHCR’s view, not be undertaken.

“ We encourage States to address the vulnerabilities to HIV and the specific health-care needs experienced by migrant and mobile populations, as well as by refugees and crisis-affected populations, and to take steps to reduce stigma, discrimination and violence, as well as to review policies related to restrictions on entry based on HIV status, with a view to eliminating such restrictions and the return of people on the basis of their HIV status, and to support their access to HIV prevention, treatment, care and support. ”

UN General Assembly, [New York Declaration for Refugees and Migrants](#), Resolution 71/1, 2016

- ▶ [Note on HIV/AIDS and the protection of refugees, IDPs and other persons of concern](#), UNHCR, 2006
- ▶ [10 key points on HIV/AIDS and the protection of refugees, IDPs and other persons of concern](#), UNHCR, 2006

Access to work for asylum-seekers

Granting asylum-seekers access to the labour market can help to reduce the cost of supporting asylum-seekers, and can benefit the local economy. (On the right to work, see also Chapter 8.3.)

Allowing asylum-seekers to work during the asylum determination process, or at the very least, to be self-employed, helps to reduce their social and economic exclusion, and can alleviate the loss of skills, low self-esteem and mental health problems that often accompany prolonged periods of idleness. It can also reduce asylum-seekers' vulnerability to exploitation and improve their integration prospects if they are permitted to remain in the host country, as well as their chances of successful reintegration in the context of return.

State and regional practice

Access to work for asylum-seekers The European Union's 2013 [recast Reception Conditions Directive](#) sets the maximum waiting period for asylum-seekers before they are permitted to work after lodging their asylum claim at nine months, if there has been no decision on the claim and the delay cannot be attributed to the applicant. [Some EU Member States](#) give asylum-seekers earlier access to the labour market, for instance **Sweden** (immediately, if able to establish their identity through original documents or authorized copies); **Malta** (immediately, if not in detention); **Greece** (once registered); **Portugal** (once the claim is declared admissible, usually after one month); **Italy** (after two months); **Austria, Bulgaria, Germany** (after three months); **Belgium** (after four months) **Denmark, Finland, the Netherlands, Poland, and Spain** (after six months). In practice access may be limited e.g. by language barriers, requirements to work only in certain sectors, for a limited number of weeks a year, or only in jobs that cannot be filled by domestic workers, or because of difficulties proving educational or professional experience.

In [Latin and Central America](#), asylum-seekers have immediate access to the labour market in **Argentina, Bolivia, Brazil, Chile, Ecuador, Nicaragua, Paraguay, Peru, and Uruguay**. In **Costa Rica**, asylum-seekers are permitted to work if the claim has not been decided after three months. In Argentina, Brazil and Chile, an asylum-seeker's relatives also have the right to work.

In **Switzerland**, asylum-seekers may apply for work if after three months they have not received a decision on their application, but must apply for a work permit and may only take up jobs where no candidate can be found in the domestic labour force. In the **Republic of Korea**, asylum-seekers may engage in wage-earning employment six months after the refugee application was filed, but must approach the immigration office with an employment contract and request a work permit. In **South Africa**, the Refugees Act of 1998 grants recognized refugees (though not explicitly asylum-seekers) a right to work. The courts have nevertheless held that [asylum-seekers may work](#) following the filing of their asylum application, including on a [self-employed](#) basis, on the basis of the constitutional right to dignity. In the **United States**, asylum-seekers are eligible to receive work authorization 180 days after filing their asylum application, although there can be considerable delays in obtaining permission to work.

Checklist for parliamentarians:

Reception facilities, registration and assistance

To support the development of reception facilities, registration and provision of assistance in line with international standards and good practice, parliamentarians are encouraged to:

- ✔ Include provision in legislation for assistance to asylum-seekers who cannot meet their subsistence needs independently. This assistance should continue at least until the final outcome of the claim.
- ✔ Where legislation regulates reception facilities at the borders, including air and sea borders, ensure this includes all necessary assistance, including food, shelter and basic sanitary and health facilities.
- ✔ Where legislation restricts asylum-seekers' freedom of movement, lobby to ensure that such restrictions are not excessive.
- ✔ Ensure that legislation stipulates that each individual asylum-seeker will receive individual documentation attesting to their identity and status, and confirming that the bearer is allowed to remain in the territory of the State pending a final decision on the asylum application.
- ✔ Ensure that that single men and women are housed separately and that family members are able to stay together.
- ✔ Lobby to ensure that reception arrangements are not withdrawn for failure to comply with requirements of the asylum procedure (e.g. not coming to an interview), as this may affect an asylum-seeker's family members, in particular children.
- ✔ Ensure that asylum-seekers have access to primary health care (including antiretroviral therapy if needed) and emergency medical care, both upon arrival and throughout the asylum procedure.
- ✔ Support the provision of psychological care and counselling free of charge for survivors of torture and traumatized persons.
- ✔ Support an entitlement for asylum-seekers to receive basic tuition in the language of the country of asylum. Knowledge of the language can facilitate good relations with the local population and enhance asylum-seekers' understanding of the asylum process.
- ✔ Support asylum-seekers access to the labour market, either immediately or within a limited time after the asylum application is lodged, and to vocational training, where public programmes are available.
- ✔ Promote reception arrangements that take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, and the inclusion of measures for early identification of asylum-seekers with specific needs.
- ✔ With regard to child asylum-seekers, ensure that legislation provides for their best interest to be a primary consideration in all actions concerning them.
- ✔ Ensure that primary education is free and compulsory for all asylum-seeking children. Given the importance of education, secondary education should also be made available to asylum-seekers. If education of asylum-seekers is provided in facilities separate from regular schools, this should be for a limited period only, as this contributes to marginalization.
- ✔ Ensure that legislation provides for the identification of girls and boys at risk, and the determination of what accommodation arrangements are in their best interests, including foster care as required.
- ✔ With regard to unaccompanied and separated child asylum-seekers, ensure that legislation provides for the appointment of a guardian or adviser as soon as an unaccompanied or separated child is identified, as well as for family tracing and reunification wherever possible and in the child's best interests.
- ✔ Ensure that legislation gives unaccompanied and separated child asylum-seekers access to social services and legal protections on the same basis as any other child in the host country who is not in the care of his or her parents.
- ✔ Ensure that legislation gives UNHCR a right of access to all reception facilities and that it allows all asylum-seekers to contact UNHCR.

5.3 Freedom of movement, detention and alternatives to detention

Liberty and security of the person are fundamental human rights, reflected in the international prohibition on arbitrary detention and supported by the right to freedom of movement.

In exercising their right to seek and enjoy asylum, asylum-seekers are often forced to arrive at, or enter, a country of asylum without authorization. Many are not able to obtain passports or visas and may be forced to travel with false documents or without documents.

Bearing in mind that seeking asylum is not an unlawful act, and consistent with international refugee and human rights law and standards, detention of asylum-seekers should normally be avoided. Any restrictions on liberty imposed on persons exercising this right need to be provided for in law, carefully circumscribed, and subject to prompt review. Detention may only be applied where it pursues a legitimate purpose and has been determined to be both necessary and proportionate in each individual case.

“ [I]n view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.”

[UNHCR Executive Committee Conclusion No. 44 \(XXXVII\) Detention of asylum-seekers, 1986](#)

“ There is no empirical evidence that detention deters irregular migration, or discourages persons from seeking asylum.”

[UNHCR/OHCHR, *Global roundtable on alternatives to detention of asylum-seekers, migrants and stateless persons, summary conclusions*, 2011](#)

What constitutes detention?

Detention in the asylum context refers to the deprivation of liberty or confinement in a closed place that an asylum-seeker is not permitted to leave at will. This includes, but is not limited to, prisons or purpose-built detention facilities and closed reception or holding centres. Detention can take place in a range of locations, including at land and sea borders, “international zones” at airports, on islands, and on boats.

Regardless of the location or name given to a particular place of detention, or whether it is administered by public authorities or private contractors, the important questions are whether an asylum-seeker is being deprived of his or her liberty and whether this deprivation is lawful according to international law.

Ten guidelines on detention

1. The **right to seek asylum** must be respected.
2. The **rights to liberty and security of person and to freedom of movement** apply to asylum-seekers.
3. **Detention must be in accordance with and authorized by law.**
4. **Detention must not be arbitrary** and any decision to detain must be based on an assessment of the individual's particular circumstances.
5. **Detention must not be discriminatory.** International law prohibits detention or restrictions on the movement of a person on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States may be liable to charges of racial discrimination if they impose detention on persons of a particular nationality.
6. **Indefinite detention is arbitrary and limits** should be established in law. The test of proportionality applies to the initial order of detention and any extensions. The length of detention can render an otherwise lawful decision disproportionate and thus arbitrary. Asylum-seekers should not be held in detention for any longer than necessary. To guard against arbitrariness, maximum periods of detention should be set in national legislation.
7. Decisions to detain or to extend detention must be subject to **procedural safeguards**.
8. Conditions of detention must be **humane and dignified**.
9. The **special circumstances** and needs of particular asylum-seekers must be taken into account. They include victims of trauma or torture, children, women, victims or potential victims of trafficking, asylum-seekers with

disabilities, older asylum-seekers, lesbian, gay, bisexual, transgender or intersex (LGBTI) asylum-seekers.

10. Detention should be subject to **independent monitoring and inspection**.

Detention: When is it legitimate?

Detention should be exceptional and a measure of last resort. It can only be justified for a legitimate purpose. Otherwise detention will be considered arbitrary. The purposes of detention should be clearly defined in legislation and/or regulations. In the asylum-seeking context, detention may be necessary in an individual case on grounds of public order, public health or national security.

Detention can only be resorted to when it is determined to be **necessary, reasonable in all the circumstances and proportionate to a legitimate purpose**. This must be judged in each individual case, initially as well as over time.

To protect public order

Where there are strong grounds for believing that a specific asylum-seeker is **likely to abscond or otherwise to refuse to cooperate with the authorities**, detention may be necessary. Factors to balance in an overall assessment of the necessity of such detention could include: a past history of cooperation or non-cooperation, past compliance or non-compliance with conditions of release or bail, family or community links or other support networks in the country of asylum, willingness or refusal to provide information about the basic elements of the asylum claim, or whether the claim is considered manifestly unfounded or abusive.

In connection with accelerated procedures for “manifestly unfounded” or “clearly abusive” claims any detention must be regulated by law and, as required by proportionality considerations, must weigh the various interests at play. (See Chapter 7.8 – Accelerated procedures.)

Detention: When is it not justified?

Minimal periods in detention may be permissible **for initial identity and/or security verification**. This should last only as long as reasonable efforts are being made to establish identity or to carry out security checks and should be within strict time limits established in law. Inability to produce documentation should not automatically be interpreted as an unwillingness to cooperate or lead to an adverse security assessment.

It is permissible to detain an asylum-seeker for a limited initial period **for the purpose of recording, within the context of a preliminary interview, the elements of their claim to international protection, which could not be obtained in the absence of detention**. This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought but would not ordinarily extend to a determination of the full merits of the claim.

To protect public health

Carrying out health checks on individual asylum-seekers may be a legitimate basis for a period of confinement, provided it is justified in the individual case or as a preventive measure in the event of specific communicable diseases or epidemics. In the immigration context, such health checks should be carried out upon entry to the country or as soon as possible thereafter.

To protect national security

Governments may need to detain a particular individual who presents a threat to national security. Even though determining what constitutes a national security threat is within the prerogative of the government, the measures taken need to be necessary, proportionate to the threat, non-discriminatory, and subject to judicial oversight.

Detention that is not pursued for a legitimate purpose and/or is in conditions that do not meet international standards, in particular bearing in mind any vulnerabilities of the individual asylum-seeker, would be arbitrary and not justified.

Detention as a **penalty for irregular entry** of a person who is seeking asylum is not lawful under international law. Irregular entry or stay of asylum-seekers does not give the State an automatic power to detain or otherwise to restrict freedom of movement. (See also Chapter 4.7 – Non-penalization for irregular entry.)

Detention imposed as a **deterrent to seeking asylum** is inconsistent with international norms. Detention is not permitted as a punitive measure for irregular entry or presence in the country. It would constitute a penalty under Article 31 of the 1951 Convention and may amount to collective punishment in violation of international human rights law.

As a general rule, the **detention of asylum-seekers to facilitate expulsion** is unlawful if they are in on-going asylum proceedings, as they cannot be removed until a final decision on their claim has been made. Detention for the purposes of expulsion may only occur after the asylum claim has been finally determined and rejected. Nevertheless, where there are grounds for believing that an asylum-seeker has lodged an appeal or introduced an asylum claim merely to delay the implementation of an expulsion or deportation order, the authorities may consider detention – as determined to be necessary and proportionate in the individual case – to prevent their absconding, while the claim is being assessed.

Decisions to detain or to extend detention: What safeguards need to be in place?

When decisions concerning detention are being made, asylum-seekers are entitled to the following minimum procedural guarantees:

- To be informed of the reasons for their detention and their rights in connection with the order, including review procedures. This needs to be done at the time of their arrest or detention and in a language and in terms which they understand;
- To be informed of their right to legal counsel, which should be free where it is also available to nationals in detention;
- To be brought promptly before a judicial or other independent authority to have the detention decision reviewed;
- In addition to an initial review of decision to detain, there should be regular, periodic reviews of the necessity for continued detention;
- Irrespective of the reviews mentioned above, the asylum-seeker should have the right, either personally or through a representative, to challenge the lawfulness of detention before a court of law at any time;
- The burden of proof for establishing the lawfulness of the detention rests on the authorities;
- To be given effective access to asylum procedures;
- To contact and be contacted by UNHCR and other bodies, such as the national refugee body, ombudsman's office, human rights commission or NGOs;
- General data protection and confidentiality principles must be respected in relation to information about the asylum-seeker.

Humane and dignified detention: How to ensure this?

Asylum-seekers who are detained should be **treated with dignity** in accordance with international standards. They are entitled to the following minimum conditions of detention:

- **Detention can only lawfully be in places officially recognized as places of detention.**
- Detention of asylum-seekers for immigration-related reasons should **not be punitive** in nature. The use of prisons should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population.
- Detainees' names, the location of their detention, and the names of persons responsible for their detention should be kept in **registers** readily available to those concerned, including relatives and legal counsel, with access to this information balanced with issues of confidentiality.
- Men and women should be **segregated** unless they are within the same family unit. Children should be separated from adults unless they are relatives. Where possible, accommodation for families should be provided.
- **Appropriate medical treatment must be provided where needed**, including psychological counselling. A medical and mental health examination by competent medical professionals should be offered to detainees as promptly as possible after arrival. Many detainees have suffered trauma in their country of origin or during flight. Others suffer psychological and physical effects as a result of their detention. Periodic assessments should thus be undertaken. Where medical or mental health concerns are present, those affected need to be provided with appropriate care and treatment, including consideration for release.
- Asylum-seekers in detention should be able to make **regular contact** (including by telephone or internet, where possible) and receive visits from **relatives, friends, as well as religious, international and/or non-governmental organizations**, if they wish. Access to and by UNHCR must be assured.

- Asylum-seekers in detention should have the opportunity for **physical exercise** through daily indoor and outdoor recreational activities with access to suitable outside space, including fresh air and natural light.
- Asylum-seekers in detention have the right to **practise their religion**.
- **Basic necessities**, including beds, bedding, shower facilities, basic toiletries, and clean clothing, are to be provided; asylum-seekers have the right to enjoy **privacy** in showers and toilets, consistent with safe management of the facility.
- **Food of nutritional value** suitable to age, health, and cultural/religious background, is to be provided, with special diets for pregnant or breastfeeding women.
- Asylum-seekers should have **access to reading materials and timely information**, and to **education and/or vocational training, as appropriate to the length of their stay**. Regardless of their status or length of stay, children have a right to access at least primary education.
- **Frequent transfer** of asylum-seekers **from one detention facility to another should be avoided**; this can hinder access to, and contact with, legal representatives.
- A non-discriminatory **complaints mechanism** needs to be in place.
- All staff working with detainees should receive **proper training**, including in relation to asylum, sexual and gender-based violence, identification of the symptoms of trauma and/or stress, and refugee and human rights standards relating to detention.
- With regard to **private contractors**, subjecting them to a statutory duty to take account of the welfare of detainees is good practice. Because national authorities cannot contract out of their obligations and remain accountable, States need to ensure effective oversight of private contractors.
- **Children born in detention** need to be registered immediately after birth in line with international standards, and issued with birth certificates.

The special circumstances of certain asylum-seekers

Among the asylum-seekers whose special circumstances need to be taken into account in the context of detention are:

› Victims of trauma or torture

Because of the experience of seeking asylum and the often traumatic events precipitating flight, asylum-seekers may present with trauma, depression, anxiety, aggression, and other physical, psychological and emotional consequences. Such factors need to be weighed in the assessment of the necessity to detain. **Victims of torture and other serious physical, psychological or sexual violence** need special attention and **should generally not be detained**.

› Children

As a rule, children **should not be detained** for immigration reasons. Detention is never in their best interest.

The [Convention on the Rights of the Child](#) (CRC) sets out international legal obligations in relation to children and a number of guiding principles regarding the protection of children that are particularly relevant where the detention of asylum-seeking children is contemplated. These include:

- The principle of the best interests of the child, including of asylum-seeking and refugee children (Article 3 in conjunction with Article 22 of the CRC);
- The principle of non-discrimination (Article 2);
- The right to life, survival and development to the maximum extent possible (Article 6);

- The right to family unity (amongst others Articles 5, 8 and 16);
- The right not to be separated from their parents against their will (Article 9); and
- The right to appropriate protection and assistance for children seeking refugee status or recognized refugees, whether accompanied or not (Article 22).

“ [R]egardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children’s rights, is never in their best interests and is not justifiable. ”

[UN Committee on the Rights of the Child, Report of the 2012 day of general discussion on the rights of all children in the context of international migration, 2012](#)

Overall, an **ethic of care** – not enforcement – should govern interactions with asylum-seeking children, including children in families, with the best interests of the child a primary consideration. The vulnerability of a child takes precedence over considerations related to migratory status.

All appropriate alternative care arrangements should be considered in the case of **children accompanying their parents**, because of the well-documented harmful effects of detention on children’s well-being, including on their physical and mental development. The detention of children with their parents or primary caregivers needs to balance, amongst other things, the right to family and private life of the family as a whole, the appropriateness of the detention facilities for children, and the best interests of the child.

Unaccompanied or separated children should be put into the care of family members within the asylum country. If this is not possible, alternative care arrangements, such as foster placement or residential homes, should be made by the competent child welfare authorities, to ensure that the child receives appropriate supervision. A primary objective must be to act in the best interests of the child.

Ensuring accurate **age assessments** of asylum-seeking children requires the use of appropriate methods that respect human rights standards. Incorrect age assessments can result in the detention of children, if they are incorrectly determined to be adults.

If children are detained, they are entitled to the same **procedural guarantees** as adults, as well as additional guarantees tailored to their particular situation. An independent and qualified **guardian as well as a legal adviser** should be promptly appointed for unaccompanied or separated children.

Children, including children who are detained, have a **right to education**, which ideally should take place outside the detention premises. Provision should be made for **recreation and play, including with other children**.

All efforts, including prioritization of asylum processing, should be made to allow the release of children from detention and their placement in appropriate accommodation.

➤ Women

As a general rule, pregnant women and nursing mothers should not be detained.

Alternative arrangements for the accommodation of women should take into account their particular needs, including safeguards against sexual and gender-based violence and exploitation.

Where female asylum-seekers are nevertheless detained, facilities and materials are required to meet their specific hygiene needs. The use of female guards and wardens should be promoted. All staff assigned to work with women detainees should receive training relating to the gender-specific needs and human rights of women. Alternatives to detention need to be pursued in particular when separate detention facilities for women and/or families are not available.

Women asylum-seekers in detention who report abuse need immediate protection, support and counselling. Their claims should be investigated by competent, independent authorities that fully respect confidentiality. Protection measures should specifically take into account the risks of retaliation.

Women who have been subjected to sexual abuse need to receive appropriate medical advice and counselling, including where pregnancy results, and are to be provided with the requisite physical and mental health care, support and legal aid.

▶ [*United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders \(the Bangkok Rules\)*](#), UN General Assembly, 2010

▶ [*United Nations standard minimum rules for the treatment of prisoners \(the Nelson Mandela Rules\)*](#), UN General Assembly, 2016

➤ Victims or potential victims of trafficking

The prevention of trafficking or re-trafficking should not be used as a reason for detention. Trafficked persons are first and foremost victims and should not be detained, charged or prosecuted for irregular entry or residence or for any involvement in unlawful activities that are a direct consequence of their situation as a trafficked person. Alternatives to detention, including safe houses and other care arrangements, are sometimes necessary for such victims or potential victims, including children and adolescents.

➤ Asylum-seekers with disabilities

Asylum-seekers with disabilities have a right to non-discriminatory treatment. States may therefore need to make “reasonable accommodations” or changes to detention policy and practices to match their specific requirements and needs. A swift and systematic identification and registration of such persons is needed to avoid arbitrary detention. Any alternative arrangements may need to be tailored to their specific needs. **As a general rule, asylum-seekers with long-term physical, mental, intellectual and sensory impairments should not be detained.**

➤ Older asylum-seekers

Older asylum-seekers may require special care and assistance owing to their age, vulnerability, reduced mobility, psychological or physical health, or other conditions. Without such care and assistance, their detention may become unlawful.

➤ Asylum-seekers with diverse sexual orientation and/or gender identity

Any placement in detention of asylum-seekers with diverse sexual orientation and/or gender identity should not expose them to risk of ill-treatment or physical, mental or sexual abuse. They should have access to appropriate medical care and counselling, where needed. Officials engaged in detention facilities need to be trained on international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity. Where security cannot be assured in detention, alternatives to detention need to be considered. Solitary confinement is not an appropriate way to manage or ensure the protection of such individuals.

Alternatives to detention

“Alternatives to detention” is not a legal term. It is shorthand for arrangements that allow individuals who might otherwise have been detained to reside in the community, subject to certain conditions.

The consideration of alternatives to detention – from reporting requirements to structured community supervision and/or case management programmes – is part of an overall assessment of the necessity, reasonableness and proportionality of detention. It must be shown that in light of the asylum-seeker’s particular circumstances, there were no less invasive or coercive means of achieving the same ends. Such consideration ensures that detention of asylum-seekers is a measure of last resort.

Best practice indicates that alternatives to detention are most effective when asylum-seekers are:

- Treated with dignity, humanity and respect throughout the asylum procedure;
- Informed clearly and concisely at an early stage about the rights and duties associated with the alternative to detention as well as the consequences of non-compliance;
- Given access to legal advice throughout the asylum procedure;
- Provided with adequate material support, accommodation and other reception conditions, or access to means of self-sufficiency (including the right to work); and
- Able to benefit from individualized case management or counselling services in relation to their asylum claim.

Documentation is a necessary feature of alternative to detention programmes in order to ensure that asylum-seekers (and all members of their families) have evidence of their right to reside in the community. Documents also serve as a safeguard against (re) detention and can facilitate asylum-seekers’ ability to rent accommodation and to access

Alternatives to detention: What is involved?

Alternatives to detention:

- Need to be governed by **laws and regulations** that specify the alternatives available, the criteria governing their use, and the authority(ies) responsible for their implementation and enforcement;
- Are **subject to human rights standards**, including periodic review in individual cases by an independent body and timely access to effective complaints mechanisms and remedies, as applicable;
- **Should not be used as a substitute** for normal open reception arrangements;
- Should observe the principle of **minimum intervention** and pay close attention to the specific situation of particular vulnerable groups;
- May take **various forms**, depending on the particular circumstances of the individual, including registration and/or deposit/ surrender of documents, bond/bail/sureties, reporting conditions, community release and supervision, designated residence, electronic monitoring, or home curfew;
- **May involve more or less restriction on freedom of movement or liberty.** While phone reporting and the use of other technologies can be seen as good practice, especially for individuals with mobility difficulties, other forms of electronic monitoring – such as wrist or ankle bracelets – are considered harsh, not least because of the stigma attached to their use. As far as possible they should be avoided.

employment, health care, education and/ or other services, as applicable.

Regional practice

Detention of asylum-seekers a measure of last resort The European Union's 2013 [recast Reception Conditions Directive](#) emphasizes that detention of asylum-seekers is a measure of last resort, only to be applied where necessary, on the basis of an individual assessment. EU Member States must examine all non-custodial alternative measures to detention before resorting to detention. They must exercise due diligence, and delays in administrative procedures not attributable to the asylum-seeker cannot justify a continuation of detention.

State practice

[Reporting requirements as alternatives to detention](#) In **Sweden**, the Swedish Migration Agency or the Swedish Police issues a supervision order, obliging the person to report at specific times to the police or the Swedish Migration Agency closest to where he or she lives. An individual may be required to surrender his or her passport or other identity document. The decision on supervision or detention can be appealed at any time. In the **United States**, reporting obligations imposed on asylum-seekers may be satisfied by telephonic reporting. Individuals "check-in" with the immigration enforcement authorities by phone using a government subcontractor's biometric voice recognition software. The frequency of the call-in is based on an assessment of risk and may be increased or decreased depending on the individual's case. If the individual does not call-in as required, reporting requirements may increase or he or she may be detained.

State practice

[State-funded bail and community supervision](#) In **Canada**, the Border Services Agency has a contract with the Toronto Bail Programme (TBP), a non-profit entity supporting immigration detainees, including asylum-seekers and persons awaiting removal, to allow them to be released from detention. The TBP acts as “bondsperson” for those without family or other guarantors to pay bond. The TBP does not pay bail; rather asylum-seekers are released on the basis of the TBP’s guarantee. Asylum-seekers agree to cooperate with the TBP and all immigration procedures, including any reporting conditions set by the TBP, and to leave Canada if their asylum application is finally rejected. They sign a contract with the TBP agreeing to appear for all appointments and to notify the TBP of a change of address. The TBP explicitly states that failure to report may result in a return to detention. Reporting requirements generally diminish as trust is established between the TBP and the asylum-seeker. The TBP may also make unannounced visits to the asylum-seeker’s residence. In 2012–2013, 95 per cent of supervised individuals complied fully with the programme. Part of the success of the TBP relates to the provision of case management, including a comprehensive orientation at the beginning of the programme.

- ▶ [Conclusion No. 44 \(XXXVII\) Detention of refugees and asylum-seekers](#), UNHCR Executive Committee, 1986
- ▶ [Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention](#), UNHCR, 2012
- ▶ [General Comment No. 35, Article 9 \(liberty and security of person\)](#), UN Human Rights Committee (HRC), 2014, outlining States’ obligations to avoid arbitrary detention
- ▶ [Monitoring immigration detention: Practical manual](#), UNHCR, Association for the Prevention of Torture (APT) and International Detention Coalition (IDC), 2014
- ▶ [“Alternatives to detention”](#), Conference Room Paper, UNHCR, 2015

Checklist for parliamentarians:

Detention and alternatives to detention

To ensure respect for international law and human right standards, parliamentarians are encouraged to:

- ✔ Ensure that any definition of detention in legislation also covers confinement in airport or seaport transit zones, including where the only opportunity to leave these limited areas is to leave the territory.
- ✔ Since human rights law prohibits arbitrary detention, ensure detention is only resorted to where provided for by law, where necessary to achieve a legitimate purpose, and where it is proportionate to the objectives to be achieved. The necessity of detention needs to be established in each individual case, following consideration of alternatives.
- ✔ Support the general principle that asylum-seekers and refugees should not be detained solely for immigration-related reasons.
- ✔ When establishing legislation that authorizes the detention of asylum-seekers and refugees, ensure that it spells out the legitimate grounds, which should not go beyond those identified by the UNHCR Executive Committee in its [Conclusion No. 44](#), that is, to verify identity; determine the elements of a claim in the context of a preliminary interview; to ensure the cooperation of an asylum-seeker who has destroyed documents or used fraudulent documents with the intention to mislead authorities; and to protect national security.
- ✔ Promote and support a ban on detention of children, whether unaccompanied, separated or with their family. Where this is not possible, support an approach that avoids detaining children on the basis of irregular entry or stay and requires that the use of alternatives, such as residential homes or foster care placements, be examined before any detention.

Due process guarantees

- ✔ Ensure the inclusion in law of a provision specifying that individuals deprived of their liberty should be informed promptly, in a language that they understand, of the reasons for their detention.
- ✔ Ensure the inclusion in law of provisions specifying that asylum-seekers should not be held in detention for any longer than necessary, that all detention measures should be subject to judicial or administrative review, that where detention is authorized, it shall be reviewed periodically, and that maximum periods of detention are set.
- ✔ Ensure the inclusion in law of a provision specifying that refugees and asylum-seekers who are detained have the opportunity to contact UNHCR or, in the absence of such office, national refugee assistance agencies, and that UNHCR will be given access to any refugees and asylum-seekers in detention.

Detention conditions

- ✔ Ensure that laws and regulations regarding the detention of asylum-seekers and refugees include measures to safeguard their dignity.
- ✔ Advocate that asylum-seekers and refugees should not be accommodated together with persons accused or convicted of criminal offenses.
- ✔ Monitor conditions of detention through visits to detention centers and/or by following up on reports on conditions from NHRIs, other agencies or NGOs.
- ✔ If detention conditions are set out in legislation, consult with UNHCR and/or other organisations (for example ICRC where relevant) to ensure that the legislation complies with existing international and regional standards.

5.4 Responding to a mass influx

The arrival of large numbers of asylum-seekers and refugees may create a crisis beyond what any single country can deal with, even with the best of intentions. In the [New York Declaration for Refugees and Migrants](#) adopted in September 2016, the General Assembly stressed that “[n]o one State can manage such movements on its own.” In such circumstances, international co-operation is needed.

The requirement to uphold fundamental protection principles such as *non-refoulement* is nevertheless an independent obligation and cannot be made conditional on burden or responsibility sharing. The right response to a large-scale influx of refugees will save lives, promote regional stability and encourage international cooperation.

“ The Executive Committee recognizes that international solidarity and burden-sharing are of direct importance to the satisfactory implementation of refugee protection principles; stresses, however, in this regard, that access to asylum and the meeting by States of their protection obligations should not be dependent on burden-sharing arrangements first being in place, particularly because respect for fundamental human rights and humanitarian principles is an obligation for all members of the international community. ”

[UNHCR Executive Committee Conclusion No. 85 \(XLIX\), 1998](#)

UNHCR’s Executive Committee has acknowledged the challenges that arise in situations of large-scale influx and has provided guidance on:

- Standards of treatment in situations of large-scale influx and
- International cooperation and burden and responsibility sharing.

When a mass influx occurs, examining asylum requests individually may be impractical or impossible. Individual refugee status determination may need to be suspended, taking into account the imperative of providing basic protection and assistance. When the circumstances under which large numbers of people flee indicate that members of the group could be considered as refugees, the country of asylum can use *prima facie* status determination on a group basis. For more information on *prima facie* status determination and on temporary protection, see Chapters 6.3 – Determining refugee status, and 6.7 – Complementary and temporary forms of international protection.

- ▶ [Conclusion No. 22 \(XXXII\) Protection of asylum-seekers in situations of large-scale influx](#), UNHCR Executive Committee, 1981
- ▶ [Guidelines on temporary protection or stay arrangements](#), UNHCR, 2014
- ▶ [In safety and dignity: Addressing large movements of refugees and migrants](#), UN General Assembly, A/70/59, 2016

Standards of treatment in situations of large-scale influx: What to do?

UNHCR's Executive Committee has agreed on the protection measures and minimum standards of treatment that should be adopted in response to situations of large-scale influx. The Committee's [Conclusion No. 22](#) states:

"In situations of large-scale influx, asylum-seekers should be admitted to the State in which they first seek refuge, and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection ...

In all cases the fundamental principle of non-refoulement – including non-rejection at the frontier – must be scrupulously observed."

In addition, the Conclusion sets out **minimum standards** of treatment when persons arrive in such large numbers that their status cannot be quickly determined. These standards include:

- Admission to safety without discrimination;
- Protection from *refoulement*;
- Provision of adequate reception facilities, including prompt registration;
- Temporary right of residence in the country of asylum;
- Treatment in accordance with the minimum humanitarian standards including:
 - Provision of shelter,
 - Provision of material assistance, or access to employment,
 - Access to basic health care, and
 - Access to education for children;
- Respect for fundamental human rights, including access to justice and freedom of movement; and
- Possibility of joining separated family members in other countries of asylum and arrangements for tracing missing family members.

International cooperation, burden and responsibility sharing in mass influx situations

Delivering protection is, first and foremost, a State responsibility, but when a mass influx occurs, countries cannot always assume this responsibility alone. When the 1951 Convention was adopted, it was recognized in the preamble that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation"

UNHCR's Executive Committee [Conclusion No. 100 \(LV\) of 2004 on international cooperation and burden and responsibility sharing in mass influx situations](#) provides further guidance. It sets out measures to help deal with the immediate humanitarian emergency more effectively, predictably and equitably and recommends that international consultations develop a comprehensive plan of action to apportion burdens and responsibilities, including to address and facilitate durable solutions.

The international cooperation needed in such situations is best understood as both a principle and a methodology. The underlying principle is that there is a collective responsibility to respond to humanitarian crises, including those involving large population movements, and to do so in a way that respects human dignity and demonstrates international solidarity.

As a methodology, international cooperation to respond to a mass influx can take many forms, including material, technical or financial assistance, as well as the relocation or resettlement of asylum-seekers and refugees, or the deferral of removal of persons to crisis zones. Such cooperation can involve countries far removed from the crisis region as well as nearby States.

“ We acknowledge a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner. We will do so through international cooperation, while recognizing that there are varying capacities and resources to respond to these movements. International cooperation and, in particular, cooperation among countries of origin or nationality, transit and destination, has never been more important; ‘win-win’ cooperation in this area has profound benefits for humanity. Large movements of refugees and migrants must have comprehensive policy support, assistance and protection, consistent with States’ obligations under international law. ”

UN General Assembly, [New York Declaration for Refugees and Migrants](#), Resolution 71/1, 2016

State practice

Deferral of removal to situations of humanitarian crisis – Canada has the possibility of issuing an [administrative deferral of removal](#) notice. This can be used when removals are not possible because of situations of humanitarian crisis, where the impact of the event is such that it would be inconceivable to return anyone until some degree of safety is restored. It does not apply to persons who are inadmissible and subject to removal on grounds of criminality, international or human rights violations, organized crime or security.

- ▶ [Conclusion No. 100 \(LV\) on international cooperation and burden and responsibility sharing in mass influx situations](#), UNHCR Executive Committee, 2004
- ▶ [Expert meeting on international cooperation to share burdens and responsibilities](#), UNHCR, 2011
- ▶ [Conclusion No. 112 \(LXVII\) on international cooperation from a protection and solutions perspective](#), UNHCR Executive Committee, 2016

Checklist for parliamentarians:

Responding to mass influx

The following measures can be taken by parliamentarians to ensure practical and effective responses to mass influx in line with international law and State practice.

In countries receiving a mass influx:

- ✔ Support measures to ensure that borders are kept open, in keeping with the principle of *non-refoulement*.
- ✔ Support measures to ensure that new arrivals receive protection and assistance in line, at a minimum, with the standards outlined in Executive Committee Conclusion No. 22.
- ✔ Encourage the development of procedures, set out in legislation or regulations, to respond to mass influx situations. Ideally, this should be done before a mass influx occurs.
- ✔ Encourage the government to invite UNHCR (and other UN agencies) to provide advice and assist in the delivery of protection and assistance.
- ✔ Encourage the government to call for international consultations to develop

appropriate responses and a comprehensive plan of action to apportion burdens and responsibilities in response to the influx.

In other countries:

- ✔ Encourage your government to call for and participate in consultations on the international response to a mass influx situation, in order to develop a comprehensive plan of action to apportion burdens and responsibilities, and urge your government to provide assistance and support.
- ✔ Support measures to refrain from returning persons not only to the country from which the exodus is occurring, but also to countries overburdened by large-scale arrivals from the country in crisis.
- ✔ Lobby for the use of emergency resettlement, humanitarian evacuation/admission, family reunification and/or humanitarian and student visas, including by your country, to provide legal pathways to safety for persons affected by the crisis.

5.5 Responding in emergencies

In refugee emergencies, lives are at stake and the need to provide protection and assistance is often enormous. Refugees may be pouring into a country that does not have experience in handling the arrival of large numbers of hungry, sick, wounded or frightened people. The country or countries of asylum may be under tremendous pressure and often face relentless media scrutiny.

The aim of emergency response is to provide protection and ensure that the necessary assistance reaches people in time. The country of asylum is responsible for the safety and security of refugees on its territory, and for maintaining law and order. Governments often rely on the international community to help share the burden; UNHCR provides assistance to refugees at the request of governments or the UN Secretary General.

Responsibility for coordinating the response of the UN system to a refugee emergency normally rests with UNHCR, working closely with the World Food Programme, UNICEF

Refugee story:

Four generations on the run

As the ferry anchors near Kagunga village, on the Tanzanian shore of Lake Tanganyika, 60-year-old Foibe Ndikumana sits patiently on the sand, waiting to hear her name called. She is eager to leave behind the crowded lakefront village and the haunting memories of what she fled in Burundi.

She has spent half her life in exile and is now a refugee for the fourth time. Of her eight children, only the youngest was born in Burundi.

Four generations of Foibe's family arrived in Kagunga from southern Burundi two weeks earlier. "We fled because of lack of security," she says. "When the political parties started the campaign, some of them were using phrases like: 'We will wash you like clothes with detergent.' Because of what happened the three previous times when we fled, we were scared."

Foibe fled Burundi for the first time in 1972, when tens and perhaps hundreds of thousands of people were killed, including her father, and spent the next 17 years in exile in Tanzania, returning to Burundi in 1989. A few years later, upon the 1993 assassination of President Melchior Ndadaye, she fled to Tanzania again. She returned home two months later, but peace did not last.

"The killings started again in 1997," she recalls. "That's when my husband was killed. We found

him stabbed to death. We don't know who did it." And so she fled again to another refugee camp in Tanzania. After five years there, she was finally able to return home – until violence erupted again in 2015.

Foibe and her family have struggled to survive in Kagunga, where the sudden influx initially meant that food had to be prioritized for children and women who were pregnant or lactating. "Being here is difficult," she says. "It is crowded. It is smelly. There is no food. Some people are starving. Some people are sick. They are dying. We sleep here on the floor."

Yet, despite the dire conditions in Kagunga, she is happy to have reached safety in Tanzania and has no hope of going back to Burundi in the near future.

Soon, Foibe hears her name called and boards the ferry to cross the lake with her family. From there, they travel overland to another refugee camp, where they begin to feel more at ease.

"We were received well," Foibe says. "They showed us a place where we can rest and we were given sleeping mats. This place is nicer than Kagunga. Things are slightly getting to normal, but we are very tired of being refugees. We pray to God that this will end."

["Four generations on the run"](#), UNHCR, 2015

and the United Nations Development Programme, and others (for example, the ICRC). NGOs play a critical role in assisting refugees in emergencies. The country of asylum, UNHCR and the various international and nongovernmental organizations involved allocate responsibilities in order to avoid duplication of efforts and gaps in protection and assistance.

What is a refugee emergency?

UNHCR's working definition of a refugee emergency is:

“ Any situation in which the life or well-being of refugees will be threatened unless immediate and appropriate action is taken, and which demands an extraordinary response and exceptional measures”.

Maintaining the civilian and humanitarian character of asylum: What to do?

Host States have the primary responsibility for ensuring the civilian and humanitarian character of asylum. UNHCR Executive Committee [Conclusion No. 94 \(LIII\)](#) provides guidance on how to ensure the civilian and humanitarian character of asylum. Key actions include:

- Measures to identify, disarm, separate and intern combatants, as soon as possible, preferably at the point of entry;
- Early identification and separation of combatants is facilitated by registration of new arrivals that involves a careful screening process;
- Adequate security arrangements in refugee camps and settlements can help deter infiltration by armed elements and strengthen law and order;
- Once identified, disarmed and separated from the refugee population, combatants should be interned at a safe location from the border;
- If refugee status is determined on a group basis, civilian family members of combatants should be treated as refugees and should not be interned together with them;
- Combatants should not be considered as asylum-seekers unless the authorities have established within a reasonable timeframe that they have genuinely and permanently renounced military activities. If this has been established, an individual determination of refugee status should be carried out, paying utmost attention to possible grounds for exclusion, so as to avoid abuse of the asylum system by those who do not deserve international protection;
- Former child soldiers should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation;
- Where necessary, host States should develop, with assistance from UNHCR, operational guidelines in the context of group determination to exclude those individuals who are not deserving of protection as refugees.

When the crisis requires a response that goes beyond the mandate or capacity of a single agency, the UN Office for the Coordination of Humanitarian Affairs (OCHA), may take the lead through coordination, policy development and advocacy.

The sections that follow examine the responses needed to ensure that

- The civilian and humanitarian character of asylum is maintained; and
- The protection of refugee boys, girls, and women can be assured.

The civilian and humanitarian character of asylum

Refugee emergencies frequently arise as a result of armed violence and conflict in the country of origin. Amongst those fleeing there are likely to be not only civilians, but also armed elements seeking temporary respite or sanctuary in neighbouring countries. Refugee camps and settlements should, however, have an exclusively civilian and humanitarian character. Combatants have no place in them; their presence undermines the protection of civilians who have fled conflict.

The primary responsibility for ensuring the civilian and humanitarian character of asylum lies with States. Governments can help to ensure this by locating refugee camps and settlements at a reasonable distance from the border, maintaining law and order, curtailing the flow of arms into refugee camps and settlements, and implementing measures as suggested by the Executive Committee below.

The UN General Assembly:

“ Urges States to uphold the civilian and humanitarian character of refugee camps and settlements, inter alia, through effective measures to prevent the infiltration of armed elements, to identify and separate any such armed elements from refugee populations, to settle refugees in secure locations and to afford to the Office of the High Commissioner [for Refugees] and, where appropriate, other humanitarian organizations prompt, unhindered and safe access to asylum-seekers, refugees and other persons of concern.”

UN General Assembly Resolution 69/152, 2014

- ▶ [Conclusion No. 94 \(LIII\) on the civilian and humanitarian character of asylum](#), UNHCR Executive Committee, 2002
- ▶ [Maintaining the civilian and humanitarian character of asylum: Conclusions and preliminary issues raised](#), UNHCR, 2004
- ▶ [Operational guidelines on maintaining the civilian and humanitarian character of asylum](#), UNHCR, 2006

Protecting children in refugee emergencies

The physical and psychological wellbeing of children are deeply affected by violence and displacement. Family and community structures are disrupted. Children can easily become orphaned or separated from their families. This makes them particularly vulnerable to recruitment as child soldiers by government armed forces or organized armed groups as well as to sexual exploitation.

Registration procedures to identify children at risk and efforts to find surviving family members need to be set up as soon as an emergency occurs. Other measures designed to provide refugee children with a secure environment and to ensure their protection and care are set out in UNHCR Executive Committee [Conclusion No. 107 \(LVIII\)](#). That Conclusion draws attention to the importance of incorporating needs and rights of children into planning and cooperation strategies.

Checklist for parliamentarians:

Civilian and humanitarian character of asylum

To safeguard the civilian and humanitarian character of asylum, parliamentarians are encouraged to:

- ✔ Advocate for emergency response procedures to include a duty for the State to identify, disarm and separate combatants from the refugee population and intern them at a safe location from the border.
- ✔ Advocate for special protection and assistance measures for children formerly associated with armed forces or groups, in particular as regards their demobilization and rehabilitation.
- ✔ Advocate for humanitarian access, allowing and facilitating rapid and unimpeded passage of humanitarian personnel, equipment and relief for civilians in need.

For recommendations in relation to group-based or *prima facie* refugee status determination see Chapter 6.3 – Determining refugee status, Recognition of refugee status on a *prima facie* basis.

Refugee children have the right to special protection and treatment under the Convention on the Rights of the Child. One of the Convention's three Optional Protocols obliges States to ensure that children are not compulsorily recruited into their armed forces and to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The [Optional Protocol](#) also requires States to take all necessary legal, administrative and other measures to prevent the recruitment of children by armed groups and the participation of children in armed hostilities. This involves working to prevent the unlawful recruitment or use of children by armed forces or groups and seeking the unconditional release of children recruited or used unlawfully by armed forces or armed groups, and supporting their protection and reintegration.

The IPU Assembly

“ Encourages parliaments to enact legislation aimed at addressing the special needs of separated and unaccompanied children and children involved in armed conflicts which, as a minimum, should provide for specific procedures in keeping with the rule of law... ”

The IPU Assembly

“ Urges governments to take action so that separated and unaccompanied children fleeing illegal recruitment by armed forces or groups can cross borders and exercise their right to request asylum and so that no child in this category is returned to the border of a State where his/her life is truly at risk. ”

[Resolution on the role of parliaments in protecting the rights of children, in particular unaccompanied migrant children, and in preventing their exploitation in situations of armed conflict, 130th IPU Assembly, Geneva, 2014](#)

Protecting refugee women and girls in emergencies

Women and girls are particularly affected by armed conflict and forced displacement. Sexual and gender-based violence (SGBV), including rape, trafficking, sexual slavery, abduction and forced recruitment by armed groups, and the intentional spread of sexually transmitted infections – are among the defining characteristics of contemporary armed violence and conflict. The primary targets of these abuses are women and girls. The number of female- and child-headed households increases during conflict and displacement. Adolescent girls trying to care for their younger siblings are especially at risk, and survival sex may be the only way they can support themselves and their families.

Under international humanitarian law, all parties to a conflict are responsible for ensuring that women and children are “the object of special respect” and are “protected against rape, forced prostitution and any other form of indecent assault”. This applies in both camp and non-camp settings.

UNHCR's Executive Committee, in its [Conclusion No. 98 \(LIV\) on protection from sexual abuse and exploitation](#), urges States to:

- Develop and implement training programmes, guidelines and other measures to promote respect for the right of every individual to security of person and strengthen protection from sexual abuse and exploitation;
- Take follow-up actions in response to allegations of sexual violence and exploitation, including, where necessary, remedies; and
- Establish accessible and confidential complaint and redress mechanisms.

More generally, registering women refugees and ensuring they have their own identity documentation makes it easier for them to access services and protection. Family tracing and reunification help to re-establish normal life. Executive Committee [Conclusion No. 105 \(LVII\) on women and girls at risk](#) sets out in more detail responses needed to protect women and girls.

Facing a refugee emergency: What to do?

Ensure that borders are kept open to allow access to safety

Make sure that people have access to safety by providing a legislative framework for their admission and reception before an emergency arises. Ensure this is based on the principle of *non-refoulement*, including non-rejection at the frontier. If a national legal framework and institutional structures are in place before an emergency occurs, this will facilitate a more effective response and will help UNHCR to mobilize international support more quickly and effectively.

Adhere to standards of treatment that respect rights and dignity

- Refugees should not be penalized or exposed to unfavourable treatment solely because their presence in the country is considered unlawful. They should not be subject to restrictions on their movements other than those that are necessary in the interests of public health and public order.
- Refugees should enjoy the fundamental civil rights recognized internationally, in particular those set out in the [Universal Declaration of Human Rights](#).
- Refugees should receive all necessary assistance and be provided with the necessities of life, including food, shelter and basic sanitary and health facilities. In this respect, the international community should cooperate in a spirit of international solidarity to support neighbouring States hosting the majority of the refugees.
- Refugees should not be subjected to cruel, inhuman or degrading treatment.
- There should be no discrimination on the grounds of race, religion, political opinion, nationality, country of origin, physical incapacity or other grounds.

- Refugees are to be considered as persons before the law, enjoying free access to courts of law and other competent administrative authorities.
- The location of refugees should be determined by their safety and well-being as well as by the security needs of the receiving State. They should, as far as possible, be located at a reasonable distance from the frontier of their country of origin and should not become involved in subversive activities against their country of origin or any other State.
- Family unity should be respected and all possible assistance given to trace relatives.
- Adequate provision should be made for the protection of children, including unaccompanied and separated children, and for ensuring their best interests are respected.
- Communication via regular mail or other means should be allowed and material assistance from friends or relatives should be permitted.
- Appropriate arrangements should be made for the registration of births, deaths and marriages.

Adopt a refugee definition that encompasses persons fleeing armed conflict and violence and provide complementary or temporary forms of protection if necessary

The refugee definition, as found in the 1951 Convention, the 1969 OAU Convention, the Cartagena Declaration and the national legislation of many countries, will provide the foundation for protection in a refugee emergency, including for persons fleeing armed conflict and violence.

For more on recognition of refugee status on a *prima facie* basis see Chapter 6.3 – Determining refugee status, Recognition of refugee status on a *prima facie* basis, and on the applicability of the 1951 Convention in the context of persons fleeing armed conflict and violence and complementary and temporary forms of protection see Chapter 6.7.

Call for international support and responsibility sharing

Parliamentarians can support calls for international solidarity and responsibility sharing by publicizing the refugees’ needs and the contributions already made by their country in giving asylum, by allowing access for humanitarian organizations, and calling for international consultations to develop a comprehensive plan of action to engage a range of actors and support a more effective response to the emergency.

Call on the government to ensure security in camps and the civilian and humanitarian character of asylum

Parliamentarians can call on the government to do its utmost to protect the refugees and national and international aid workers. Public safety and order are the responsibility of the country of asylum. In cases where international support for this function is needed, the government should explore ways of receiving the necessary assistance.

Human and social impact: Advocate for refugees

During emergencies, parliamentarians can make a great difference in how refugees are treated. They can call for the country to honour its international humanitarian commitments. They can show their solidarity with refugees by informing themselves about the situation, visiting refugee camps, settlements or detention centres. They can address the questions and concerns of the local population and attempt to defuse any negative attitudes that might arise from lack of information, misunderstanding, or prejudice.

Chapter 6

Determining who needs international protection



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6.1 Introduction

To protect refugees, a State must know who they are. National authorities have to be able to identify people who need international protection, and distinguish them from others seeking entry to the territory. Establishing mechanisms to determine who needs international protection, notably as refugees, allows States to respect the right to seek and enjoy asylum, and to uphold their obligations under the 1951 Convention and international human rights law.

Some States have adopted an individualized approach to refugee status determination; others undertake group-based recognition; still others adopt a hybrid approach, determining refugee status on an individual basis for some caseloads and undertaking *prima facie* group-based recognition for others. A group-based approach is generally adopted in cases of large-scale influx, when individual determinations are not practicable, and where the international protection needs are evident (*prima facie*). In some countries, UNHCR undertakes refugee status determination under its mandate or is otherwise involved in the asylum procedure.

Despite efforts by UNHCR and others to promote consistent approaches, there is still variation in how international protection needs are identified from region to region and even among countries in the same region.

This chapter provides guidance on developing national laws and policies and their content in relation to:

- State responsibility for undertaking refugee status determination;
- Determining refugee status, whether on a *prima facie* or individual basis;
- Who is included in the refugee definition, including the elements of the refugee definition and particular cases, notably related to age, gender and diversity;
- The situation of Palestinian refugees;
- Who should be excluded from refugee status; and
- Complementary and temporary forms of international protection.

Procedural issues regarding status determination are covered in Chapter 7.

6.2 State responsibility for refugee status determination

It is important for States to adopt national legislation on the determination of refugee status and other international protection needs, rather than relying on informal or ad hoc arrangements. This is a crucial element of State responsibility for protecting refugees and helps to ensure consistency of practice in line with international obligations.

The 1951 Convention does not dictate the procedures to be followed for determining refugee status. Parliamentarians can have a great impact on refugee protection by promoting the adoption of legislation that is consistent with international refugee protection and human rights obligations, while taking account of the country's particular constitutional and administrative structure as well as other national laws.

“ The Executive Committee “emphasizes that refugee protection is primarily the responsibility of States, and that UNHCR’s mandated role in this regard cannot substitute for effective action, political will, and full cooperation on the part of States.”

[UNHCR Executive Committee Conclusion No. 81 \(d\), 1997](#)

UNHCR's supervisory role in the refugee status determination context

As part of UNHCR's responsibility to supervise and support the application of the 1951 Convention and 1967 Protocol, UNHCR is available to assist States in establishing asylum systems and in working to enhance the quality of refugee status determination. The local UNHCR office can provide advice on the various forms UNHCR's engagement might take.

In line with this supervisory role, UNHCR also issues guidance to assist States (and its own staff) with refugee status determination. The UNHCR [Handbook on procedures and criteria for determining refugee status](#), issued at the request of the Executive Committee, is particularly relevant. Other legal and policy guidance are UNHCR's thematic [Guidelines on International Protection](#) and country-related material, including eligibility guidelines, protection considerations, and non-return advisories.

States parties to the 1951 Convention and/or 1967 Protocol are expected to give UNHCR information and statistical data on the condition of refugees, on their implementation of the Convention, and on laws, regulations and decrees relating to refugees. Sometimes UNHCR has an advisory or observer role or even takes part in the decision-making, either at first or second instance. In some contexts, UNHCR's right to intervene before tribunals or courts is specified in law. (For more on UNHCR's supervisory role generally, see Chapter 2.4 – The mandate and role of UNHCR.)

Legislation on refugee status determination: What needs to be put in place?

Legislation on refugee status determination and related procedures needs to:

- Designate a central authority with responsibility for assessing applications in the first instance;
- Designate an independent appeals body, allowing for effective recourse against negative decisions for those who choose to appeal;
- Ensure that both instances have the relevant knowledge and expertise, including by providing funding to enable capacity-building, training, country of origin information sources and quality assurance mechanisms to be put in place and maintained;
- Set out the refugee definition in line with the 1951 Convention and applicable regional instruments, including who should be included and who should be excluded and any applicable forms of complementary protection;
- Set out the procedures to be followed – whether on an individual or group basis – and include appropriate safeguards to ensure efficiency and fairness, including minimum procedural and due process guarantees;
- Identify the status to be accorded to those determined to be in need of international protection – whether as refugees or as beneficiaries of complementary forms of protection – and the rights to which they are entitled; and
- Allocate the necessary resources to ensure the fairness and efficiency of the procedure.

See also generally Chapter 3.4 – Developing state asylum systems. Chapter 7 provides further information on ensuring the fairness and efficiency of asylum procedures.

In some countries, **UNHCR undertakes refugee status determination under its mandate**, notably in States that are not party to the 1951 Convention/1967 Protocol, but also in countries party to the 1951 Convention/1967 Protocol where refugee status determination procedures have not yet been established or are inadequate, as part of the process of assisting a State to assume responsibility for refugee status determination. UNHCR also undertakes individual determinations of refugee status as a precondition for resettlement.

Refugee status determination conducted by UNHCR generally yields significant protection dividends. It can help protect individual refugees from *refoulement* and enable them to access assistance and durable solutions, although only States can integrate refugee status determination in a broader framework of the rule of law. This is why **UNHCR encourages States to assume responsibility for determining refugee status**.

For States that are new to refugee status determination, the process is likely to be a gradual and progressive one, in which UNHCR seeks to provide ongoing support. In the most common scenario, UNHCR engagement can involve providing technical assistance to States drafting relevant legislation, assistance in setting up the national asylum system, capacity building, oversight of activities, undertaking joint or parallel determinations for a period of time, or being embedded in procedures in a decision-making or an observer role for the longer term.

- ▶ [Providing for protection: Assisting States with the assumption of responsibility for refugee status determination – A preliminary review](#), UNHCR, 2014

6.3 Determining refugee status

Determination of refugee status involves the individual assessment of each claim for international protection on its own merits according to the criteria set out in the 1951 Convention and applicable regional instruments. In most situations where the numbers of people arriving and seeking asylum are not overwhelming, States have opted to approve and implement legislation setting out the criteria that need to be fulfilled for refugee status to be recognized on an individual basis.

Many States have developed sophisticated systems to determine the refugee status and other international protection needs of asylum-seekers. Some have adopted a single procedure to examine refugee status and other international protection needs at the same time, although primacy is given to refugee status before eligibility for another – complementary – status is assessed.

On occasion, States have adopted legislative provisions for refugee status to be recognized on a group basis and the conditions when such approaches are warranted, including on the basis of the number of arrivals and the nature of claims.

The next subsection looks at recognition of refugee status on a *prima facie* basis. Subsequent sections set out key elements that need to be included in legislation for States to be able to determine accurately first inclusion and then any possible exclusion from refugee status.

Recognition of refugee status on a *prima facie* basis

Where large numbers of people are fleeing armed violence and conflict or other mass violations of human rights, it may be neither practical nor necessary to examine claims for refugee status individually. In such circumstances, States and UNHCR may decide to recognize refugee status for the entire group. Recognition on this basis is appropriate where there are readily apparent, objective conditions in the country of origin that indicate that those fleeing are at risk of harm that brings them within the refugee definitions in the 1951 or OAU Conventions as well as the 1984 Cartagena Declaration.

Every member of the group is considered a refugee *prima facie*, in the absence of evidence to the contrary that an individual not meet the inclusion criteria or falls within the application of one of the exclusion clauses.

A *prima facie* approach may also be appropriate in relation to groups of similarly situated individuals whose arrival is not on a large scale, but who share a readily apparent common risk of harm.

Recognizing refugee status on a *prima facie* basis has been a common practice of States and UNHCR for over 60 years. Most of the refugees hosted in developing regions have been recognized as a result of group determination on a *prima facie* basis following large-scale influxes.

Adopting a *prima facie* approach: What is involved?

A *prima facie* approach:

- Means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin;
- Acknowledges that those fleeing these circumstances are at risk of harm that brings them within the 1951 Convention and, if applicable, the OAU Refugee Convention/ Cartagena Declaration refugee definition (for States) and (for UNHCR) its mandate;
- May be applied within individual refugee status determination procedures, but is more often used in group situations on the basis of pre-existing registration data, where large-scale arrivals make individual status determination impractical, impossible or unnecessary;
- Operates only to recognize refugee status – decisions to reject require an individual assessment;
- Allows each refugee to benefit from refugee status in the country where he or she has been recognized and to enjoy the rights contained in the applicable convention/ instrument; and
- Does not result in an interim or provisional status, but remains valid unless the conditions for cessation are met, or the status is cancelled or revoked. (See also Chapter 7.3 – Cancellation, revocation and cessation of refugee status.)

Adopting a *prima facie* approach: What legal framework needs to be in place?

The decision to adopt a *prima facie* approach needs to be made in accordance with the national legal framework. States have adopted various ways of recognizing refugee status on this basis.

The most common is by decision of the executive, such as the relevant government ministry or by presidential or cabinet decision. Parliament or the administrative authority responsible for refugee affairs in the country of asylum could also take such a decision. In each case, the entity needs to have the legal authority to do so.

The decision may take the form of a published declaration, decree or order. This would generally specify:

- The applicable domestic law that provides the authority for declaring a *prima facie* approach;
- The international or regional instrument on which refugee status is based, along with the rights and duties accompanying this status;
- A description of the events/circumstances in the country of origin or former habitual residence underlying the decision, or the characteristics of the class of beneficiaries to whom the approach applies; and
- Modalities for periodic review and termination.

Some States and UNHCR apply *prima facie* approaches in individual procedures, for instance, as part of simplified or accelerated processes based on the manifestly well-founded on the basis of preexisting registration data, nature of a class of claims or on a presumption of inclusion. In such situations, this approach operates to provide an “evidentiary benefit” to the asylum-seeker in the form of accepting certain objective facts. Refugee status is provided to those who can establish that they belong to the pre-established “beneficiary class,” unless there is evidence to the contrary.

For more on the importance of identifying fighters/combatants early in refugee emergencies and separating them from the civilian population through careful screening, see Chapter 5.5 – Responding in emergencies.

State practice

Legislation or regulations providing for *prima facie* refugee recognition – In Africa, the refugee law of several countries, including [Burundi](#), [The Gambia](#), [Kenya](#), and [Rwanda](#), contains provisions for *prima facie* determination of refugee status in situations of mass influx. In [Latin America](#), Argentina, Bolivia, Chile, Costa Rica, El Salvador, Mexico, Peru, and Venezuela all have legislation or regulations on responding to mass influx. Generally these provide for *prima facie* or group-based determination in collaboration with UNHCR.

Checklist for parliamentarians:

Recognition of refugee status on a *prima facie* basis

To facilitate swift and effective processes for identifying and recognising refugees, parliamentarians are encouraged to:

- ✔ When approving legislation on the recognition of refugee status on a *prima facie* basis, support a provision requiring the legal basis for recognition to refer specifically to the instrument on which this is based, whether this be the 1951 Convention or a regional instrument.
- ✔ Ensure that the legislation provides that persons recognized on a *prima facie* basis receive all the benefits of refugee status.
- ✔ Ensure that the legislation draws a clear distinction between refugees and fighters/combatants; the latter are not eligible for protection as refugees. Civilian family members of fighters/combatants are able to benefit from refugee status on a *prima facie* basis and should not be interned with fighters/combatants.
- ✔ Former fighters/combatants should not be considered as asylum-seekers unless it is established that they have permanently and genuinely renounced military activities, in which case, a full individual examination of their claim is generally required (in particular because of the possible involvement in excludable acts).
- ✔ Where legislative provisions also enable the authorities to terminate a decision to apply a *prima facie* approach, ensure that this only applies to asylum-seekers arriving after the date of the revision or amendment. Any revision of the status or the rights of those members of the group who are already refugees should be undertaken in accordance with cancellation, revocation or cessation of refugee status provisions. (For more on this see Chapter 7.13.)

For more on refugee emergencies see Chapter 5.5.

State practice

Ministerial decrees granting *prima facie* refugee status – In the Democratic Republic of Congo, a ministerial decree adopted in 2013 recognized the *prima facie* refugee status of refugees from the Central African Republic who fled in 2010 and in 2012. In 2015, another ministerial decree provided for *prima facie* refugee status for persons fleeing unrest in Burundi.

- ▶ [Guidelines on international protection No. 11: *Prima facie* recognition of refugee status](#), UNHCR, 2015, including model declarations.

6.4 The refugee definition: Who is included?

To be recognized as a refugee, a person must have a well-founded fear of being persecuted if returned to his or her country of origin or habitual residence. This fear must relate to one or more of the five grounds set out in Article 1A(2) of the 1951 Convention: race, religion, nationality, membership of a particular social group or political opinion.

In countries where the 1969 OAU Convention applies or the Cartagena Declaration is incorporated into national law, the refugee definitions contained in these instruments would be used (see also Chapter 1.3 – Regional refugee laws and standards.)

“Persecution”: What is this?

There is no universally accepted definition of “persecution”, and the term is not defined in the 1951 Convention. It can be considered to encompass serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm. In addition, lesser forms of harm may cumulatively amount to persecution. Discrimination will also amount to persecution where the effect leads to a situation that is intolerable or substantially prejudicial to the person concerned.

What amounts to persecution will depend on the asylum-seeker’s individual circumstances, including his or her age, gender, opinions, feelings and psychological make-up.

Persecution can be related to action by the authorities of the State, but may also emanate from non-state agents, such as armed groups, criminal or organized gangs, family members or the general population, where the State is unable or unwilling to provide protection.

“Well-founded fear”: What does this mean?

What amounts to a “well-founded fear of being persecuted” depends on the circumstances of each individual case. This involves both a subjective and an objective element.

- The subjective requires an assessment of the asylum-seeker’s background, profile and experiences to determine whether his or her predominant motive for applying for asylum is fear.
- The objective element requires considering the applicant’s statements in context. Taking into account what is known about the situation in the country of origin, the personal experiences of the asylum-seeker, and the experiences of others similarly situated, does the applicant’s fear appear to be well-founded.

“For reasons of” one or more of five grounds:

In order to be considered a refugee under the 1951 Convention, a person must show well-founded fear of being persecuted “for reasons of **race, religion, nationality, membership of a particular social group or political opinion**” (Article 1A(2)). This is known as the “causal link”. When investigating the facts of a case, the examiner has to ascertain the reason or reasons for the persecution feared, keeping in mind that:

- One or more of the five reasons or grounds may apply and will frequently overlap;
- The Convention ground may be a contributing factor to the individual’s fear, but it need not be the sole, or even dominant, cause;
- In some cases, the intent or motive of the persecutor may be clear. Where it can be shown that the persecutor attributes or imputes a Convention ground to the asylum-seeker, this is sufficient to satisfy the “causal link” requirement.
- In other cases it is not possible to establish the intent or motive of the perpetrator. This is not a prerequisite. The focus is on the feared predicament of the asylum-seeker in the overall context of the country;
- Where the persecutor is a non-State actor, the causal link may be established either where the reason for persecution is linked to a 1951 Convention ground, regardless of the reason for the State’s failure to protect, or where the reason for persecution is unrelated to a 1951 Convention ground, but the State’s unwillingness or inability to protect is for a 1951 Convention reason.

Are they entitled to refugee status? A few special cases

🚫 Can a soldier be a refugee?

To be recognized as a refugee, a person must be a civilian. Someone who continues to pursue armed activities is not eligible for international refugee protection. (For more on the civilian and humanitarian character of asylum see Chapter 5.5 – Responding in emergencies.)

🚫 Can a draft evader be a refugee?

Every country, as part of its right of self-defence, is entitled to require citizens to perform military service. At the same time, international human rights law recognizes that individuals have a right to conscientious objection to such service. Some national laws do not provide adequately for conscientious objectors, either by exempting them from military service or by allowing for appropriate alternative service. In such situations, an asylum-seeker may be able to establish a well-founded fear of persecution if he or she would, for instance, face disproportionate or arbitrary punishment for refusing to perform his or her military service altogether or for refusing, while serving in the military, to engage in acts contrary to international law.

🚫 Can a criminal be a refugee?

International refugee law was not intended to shield criminals from being held accountable for their actions. This is reflected in the eligibility criteria for refugee status under the 1951 Convention. A person fleeing from legitimate criminal prosecution or punishment, rather than persecution, is not normally a refugee.

However, someone may be accused of a crime for political or other illegitimate reasons. This may be the case where the prosecution is based on a law or policy which is inherently persecutory or administered in a persecutory manner, where the criminal charges are motivated by a reason related to the 1951 Convention grounds, and/or where the potential punishment is excessive or disproportionately severe.

At the same time, a person facing legitimate prosecution may be at risk of persecution for reasons unrelated to the criminal proceedings against him or her. In cases which involve both a fear of persecution and indications that the person may have been involved in criminal conduct, it will be necessary to consider whether there are grounds for applying one of the exclusion clauses in Article 1F of the 1951 Convention.

❗ Can a war criminal be a refugee?

Someone who has participated in war crimes is specifically excluded from the protection and assistance accorded to refugees. If there are serious grounds for considering that an asylum-seeker has committed or participated in the commission of such a crime, he or she should not be given protection as a refugee. The same applies to persons responsible for crimes against humanity and other serious human rights violations – including the crime of genocide. (For more on exclusion see Chapter 6.6 Who should be excluded from refugee status? below.)

❗ Can a stateless person be a refugee?

The refugee definition explicitly includes persons who do not have a nationality and who are outside their “country of former habitual residence”. All stateless persons are not, however, refugees. They must be outside their country of habitual residence for the reasons indicated in the refugee definition. Being stateless can make someone particularly vulnerable to violations of his or her rights. They may not have documentation, may not be able to access other rights, and may face sometimes severe and cumulative discrimination as a result. Whether such treatment rises to the level of persecution for one of the Convention grounds needs to be determined in the individual case.

❗ Can someone fleeing the effects of climate change be a refugee?

If someone fleeing from the effects of climate change crosses an international border, he or she would not normally qualify as a refugee. But the situation is often more complicated. For instance, climate change may result in a scarcity of vital resources (such as water, land, food). This scarcity may trigger violence and armed conflict that forces people to flee to other countries. Such persons could qualify as refugees, if, for instance, they are targeted in the hostilities or their government has consciously withheld or obstructed assistance to punish or marginalize them on one of the 1951 Convention grounds. *For example, whole ethnic or religious communities may be disproportionately affected by food insecurity or famine that is the consequence of the conflict, establishing a connection between their well-founded fear of persecution and one or more reasons mentioned in the 1951 Convention definition of a refugee. Persons fleeing across borders in the context of climate change may also be refugees under regional refugee law instruments. For example, the 1969 OAU Convention includes broader refugee criteria in Article 1(2) that specifies protection for people who are compelled to seek refuge as a result of “events seriously disturbing public order in either part or the whole” of the country of origin, which may include situations where climate change impacts exacerbate conflict or violence.*

- ▶ [Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), UNHCR, 1979, reissued 2011
- ▶ [Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees](#), UNHCR, 2001
- ▶ [Guidelines on international protection No. 10: Claims to refugee status related to military service within the context of Article 1A\(2\) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees](#), UNHCR, 2013
- ▶ [Legal Considerations on Refugee Protection for people fleeing conflict and famine affected countries](#), UNHCR 2017
- ▶ [Guidelines on international protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions](#), UNHCR, 2016

People fleeing armed violence and conflict: Does the 1951 Convention apply?

The majority of refugees today are fleeing armed violence and conflict. At the end of 2016, half of all refugees under UNHCR's responsibility came from just four countries in conflict: Afghanistan, Somalia, South Sudan and the Syrian Arab Republic.

The 1951 Convention protects persons fleeing armed conflict, whether international or internal, and other situations of violence. Often such situations are rooted in, motivated by, or conducted along lines of race, ethnicity, or religion, or politics, gender or social group. In such contexts, individuals or whole communities may be threatened, attacked, and uprooted for reasons that are clearly related to one of the Convention grounds.

Some factors to bear in mind when applying the 1951 Convention definition of a refugee to persons fleeing armed conflict include the following:

- The 1951 Convention does not suggest that a refugee has to be singled out for persecution. A refugee may have a well-founded fear of persecution that is shared by many others;
- Threats to life or freedom, serious human rights violations, including torture or inhuman or degrading treatment, and other forms of harm constitute persecution for the purposes of the refugee definition – whether they occur in times of peace, armed conflict, or other situations of violence;
- Conflict and violence are often motivated by ethnic, religious, political, or social divisions, and/or may impact people along ethnic, religious, political, social or gender lines; and
- It is important for decision-makers to have access to high-quality information about the situation in asylum-seekers' countries of origin information, to enable them to understand the nature of conflicts and the profiles of persons at risk of persecution, individually or as part of a group.

Adopting an age, gender and diversity-sensitive approach to refugee status determination

For many years, the refugee definition was interpreted largely through a framework of adult male experiences. As a result many asylum claims made by women and children, as well as claims made by individuals arising from their sexual orientation or gender identity, have been assessed incorrectly or overlooked altogether.

Today, however, the analysis and understanding of how age, gender and diversity apply in the refugee context have advanced substantially. It is now widely recognized that these factors all need to be better understood and taken into account when determining whether someone is a refugee. (See Chapter 7.11 – Asylum-seekers with specific needs in the asylum procedure.)

An **age**-sensitive interpretation of the refugee definition takes account of the unique way children experience persecution, due to factors such as their age, their level of maturity and development, and their dependency on adults. National law and regulations need to take into account the particular forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; sexual exploitation; and female genital mutilation are some of the child-specific forms and manifestations of persecution that may justify the recognition of refugee status. Older people may also be targeted because of their position, for instance as elders in society. Treatment that might not reach the level of persecution for younger adults could do so for older people because of their frailty.

Gender is not specifically referred to in the refugee definition, but it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, covers gender-related claims. In such cases, the persecution feared may well be for more than one of the Convention grounds. For example, a claim for refugee status based on transgression of religious norms may be analysed in terms of religion, political opinion and/or membership of a particular social group.

An approach to refugee status determination that is sensitive to **diversity** ensures that asylum legislation and those implementing it are aware and take particular account of the differing experiences and challenges faced by groups that often face social exclusion. These groups include persons with disabilities; lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; and national or ethnic, religious and linguistic minorities. Such an approach requires sensitivity to how asylum-seekers' personal circumstances may affect their experience, the types of persecution to which they may have been exposed and the impact of such persecution, as well as any physical and other obstacles, including in the attitudes of others, that may hamper their ability to present their claims.

“Gender” and related terms: What do they mean?

“Gender” and a number of related terms are not always well understood. Drawing on definitions published by [UN Women](#), [UNHCR](#) and the 2007 [Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity](#), these terms can be defined as follows:

Gender

Whereas sex is a biological determination, “gender” refers to the relations between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another. Gender is not static or innate but acquires socially and culturally constructed meaning over time. Gender often defines the duties, responsibilities, constraints, opportunities and privileges of women and men in any context.

Gender-related persecution

“Gender-related persecution” is a non-legal term encompassing the range of situations in which gender is a relevant consideration in the determination of refugee status. Both women and

men may have gender-related claims, but they are more commonly presented by women. Typically, gender-related persecution encompasses, but is not limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation and other harmful traditional practices, punishment for transgression of social mores, and discrimination or other harm on account of sexual orientation or gender identity.

Sexual orientation

“Sexual orientation” refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender.

Gender identity

“Gender identity” refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms.

“ The Executive Committee “notes with appreciation special efforts by States to incorporate gender perspectives in asylum policies, regulations and practices; encourages States, UNHCR and other concerned actors to promote wider acceptance, and inclusion in their protection criteria, of the notion that persecution may be gender-related or effected through sexual violence.”

[UNHCR Executive Committee Conclusion No. 87 \(n\), 1999](#)

Are they entitled to refugee status? Some age and gender cases

❓ Can a child soldier be a refugee?

Despite prohibitions in international and regional law on the use of child soldiers, this phenomenon persists. In UNHCR's view, the forced recruitment of a child below the age of 18 years, whether by a State or a non-state armed group, amounts to persecution.

Both boys and girls may be forcibly recruited and required not only to serve as soldiers but also as cooks, porters, messengers and spies. Girls may be forced into sexual relations with members of the military or armed group. Child soldiers may thus have a well-founded fear of persecution because of the treatment to which they are subjected, or because of the conduct in which they are forced to engage, or both. On return to their country and community of origin, these children may be in danger of harassment, re-recruitment or retribution.

Where a child who is seeking asylum falls into one of the categories described above, he or she should be recognized as a refugee.

In principle, child soldiers may be excluded from refugee status if they have committed heinous crimes. However, great caution needs to be exercised in assessing any possible exclusion of children, as the child may be a victim as well as a perpetrator, and may not have reached the age of criminal responsibility as defined by the country of asylum. Even if exclusion is found to be applicable, helping former child soldiers to reintegrate into civilian life is a priority. (For more on exclusion generally, see Chapter 6.6 Who should be excluded from refugee status?)

❓ Can a victim of trafficking be a refugee?

Not all victims of trafficking are refugees, but some may be. If a victim of trafficking expresses fear about returning to his or her country of origin, it is important to assess whether the harm he or she fears is a result of having been trafficked, and whether it would amount to persecution. The authorities need to assess the person's fear of ostracism, discrimination, or punishment by family or community, the risk of being trafficked again in the absence of State protection, and the risk of reprisals against the victim (or his or her family) for having cooperated with law enforcement officials investigating or prosecuting trafficking. In some cases, the trafficked individual may have experienced treatment so atrocious as to amount to persecution in its own right, and the trauma of returning may be too great. Gender and age considerations can be particularly relevant in this assessment. Courts in many countries have found that victims and potential victims of trafficking may be considered as "members of a particular social group", depending on the risk upon return. Other grounds for recognition of refugee status may also apply, depending on the individual case.

❓ Can a woman or girl who fears that she will be forced to undergo genital mutilation be a refugee?

All forms of female genital mutilation (FGM) are considered harmful and violate a range of human rights, as affirmed by international and national jurisprudence and legal doctrine. Many jurisdictions have recognized that FGM involves the infliction of grave harm amounting to persecution and have outlawed it. As the practice disproportionately affects girls, it can be considered a child-specific and/or gender-specific form of persecution. The nexus to a 1951 Convention ground is most often in relation to political opinion, religion and/or membership of a particular social group.

❓ Can a woman be a refugee because she refuses to comply with social or religious norms?

A woman who is fleeing violence, severe discrimination or other serious harm amounting to persecution for failing to conform to strict social or religious norms in society may be eligible for refugee status. Sexual violence, such as rape, will generally amount to persecution. Persecution may be for political, ethnic or religious reasons, or on the basis of the woman's race or membership of many kinds of social groups. Persecution may emanate from a government authority or – in the absence of adequate State protection – from non-state actors.

❓ Can a woman who fears domestic violence be a refugee?

Domestically abused women are not automatically entitled to refugee status, but some are, when the abuse is serious and there is no protection from the authorities available. Each case needs to be examined on its own merits and in its specific cultural, religious and political context. Questions to assess include: How severe and persistent is the harm, and does it amount to persecution? If the fear of persecution is well-founded, is it related to one or more of the Convention grounds? What protection does the asylum-seeker have under law, and in practice? Is the persecution knowingly tolerated by the authorities? Are the authorities unable or unwilling to offer protection?

❓ Can someone who flees on account of his or her sexual orientation be a refugee?

In many parts of the world, individuals experience serious human rights abuses and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity and can qualify as refugees. Sexual orientation and gender identity are fundamental aspects of human identity. No person should be required to give up or conceal their sexual orientation and/or gender identity. A proper analysis as to whether a lesbian, gay, bisexual, transgender or intersex (LGBTI) asylum-seeker is a refugee under the 1951 Convention therefore needs to start from the premise that people are entitled to live in society as who they are and need not hide that.

It is common for LGBTI asylum-seekers to have been exposed to serious abuse, including rape and other forms of physical, psychological and sexual violence. In some countries, they may also be subject to forced institutionalization, sex-reassignment surgery, electroshock and drug therapy intended to change or alter their sexual orientation. All of these would constitute persecution.

If an LGBTI asylum-seeker comes from a country where consensual same-sex relations are criminalized, the determination needs to assess the severity of the punishment, which may in itself be persecutory, as well as the extent to which such laws are enforced. Even if rarely enforced, criminal laws prohibiting same-sex relations can create or contribute to a climate of intolerance that may expose LGBTI individuals to persecutory harm. Also, laws of general application such as public decency, marriage or sex work may be disproportionately applied to LGBTI persons.

Refugee story:

Blind Salvadoran couple play dead to flee gang threat

When gun-toting gang thugs pumped rounds of bullets into their home in El Salvador, blind couple Rosario and Victor* grabbed their 10-year-old daughter Natalia and threw themselves to the floor.

Minutes later, several figures they could not see broke into the house and loomed over them as they lay huddled on the ground. "I was paralysed, dead throughout every part of my body," Rosario says, "then we realized it was the police and I started to breathe again."

The family had been hounded by the gang, who demanded "rent" on the two massage therapy clinics they ran. When the gang doubled the extortion demand, the family shut the businesses and moved house several times to try to escape their tormenters.

Easily recognizable because of their grey canes, the gang found them time and again. Recognizing their vulnerability, the police came up with a novel – if macabre – way of spiriting the family out of the house. They should play dead.

Placing them on stretchers and covering them with a shroud-like white sheet, the officers carried the family out of the house, one by one, through the streets, accompanied by a forensic pathologist, to lend credibility to the performance.

It was obvious that the family's life in El Salvador was over. Once clear of the neighbourhood, they joined thousands of people fleeing the street gangs – or "maras" as they are known in Central America – whose crimes range from murder, rape and extortion to drug dealing, kidnapping and human trafficking.

The police took them to a point near the border with Guatemala, leaving Rosario and Victor in the care of Natalia. "We were safe but with nothing but our pyjamas," Victor recalls. "We had just a few dollars we borrowed when we crossed into Guatemala, guided by our daughter."

Once there, they spent two days sleeping on the street with no food. Finally a truck driver recognized their plight and slipped them over the border to Mexico, where they sought help at a shelter for migrants. With UNHCR's assistance, the family was transferred to a shelter elsewhere in Mexico which had better facilities for the visually handicapped.

The couple sought, and were granted, asylum in Mexico. They have now settled and found a measure of peace. Rosario and Victor would like to start their massage therapy business over again, although they still worry about the gangs, whose reach is international.

**Names have been changed for protection reasons.*

["Blind Salvadoran couple play dead to flee gang threat"](#), UNHCR, 2016

“ The High Commissioner [for Human Rights] recommends that States address violence [against individuals based on their sexual orientation and gender identity] by: ... Ensuring that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened, that asylum laws and policies recognize that persecution on account of sexual orientation or gender identity may be a valid basis for an asylum claim; and eliminating intrusive, inappropriate questioning on asylum applicants’ sexual histories, and sensitizing refugee and asylum personnel. ”

[Report of the Office of the United Nations High Commissioner for Human Rights, “Discrimination and violence against individuals based on their sexual orientation and gender identity,” 2015](#)

State practice

Specifying in legislation that persecution may be gender-related – Numerous States have chosen to specify in legislation that gender-related persecution can constitute grounds for refugee status, even though the specific inclusion of such provisions is not necessary to enable a State to recognize someone as a refugee for gender-related reasons. In [Central and Latin America](#), **Argentina, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela** all opted for this approach. In Europe, the **European Union** specifies in its 2011 [recast Qualification Directive](#) that persecution can include acts of a gender-specific nature. Many **EU Member States** have legislation to this effect, as do some nearby non-EU countries including the [former Yugoslav Republic of Macedonia](#), [Moldova](#), and [Norway](#). Elsewhere, legislation in [South Sudan](#) and [Uganda](#) refers to “gender discriminating practices” as potentially constituting persecution.

State practice

Specifying in legislation that persecution may be on account of sexual orientation and/or gender identity – In the European Union the recast Qualification Directive specifies that a particular social group may include “a group based on the common characteristic of sexual orientation” or gender identity. Legislation in [South Africa](#), [Finland](#), and [Sweden](#) also refers specifically to persons of a particular “sexual orientation” as able to constitute a particular social group.

Regional practice

[Council of Europe Convention on preventing violence against women and domestic violence](#) Article 60 of this Convention, which entered into force in 2014, commits States parties to taking “the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection”.

- ▶ [Guidelines on international protection No. 1: 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, 2002
- ▶ [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, 2002
- ▶ [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, 2006
- ▶ [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](#), UNHCR, 2009
- ▶ [Guidelines on international protection No. 9: Claims to refugee status based on sexual orientation and/or gender identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), UNHCR, 2012
- ▶ [Guidance note on refugee claims relating to female genital mutilation](#), UNHCR, 2009
- ▶ [General comment No. 6 \(2005\): Treatment of unaccompanied and separated children outside their country of origin](#), UN Committee on the Rights of the Child, 2005
- ▶ [General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women](#), UN Committee on the Elimination of Discrimination Against Women, 2014

Are States free to adopt their own refugee criteria?

A State is free to adopt more inclusive criteria than those found in the 1951 Convention, or in the definitions found in the 1969 OAU Convention and the Cartagena Declaration.

A signatory State may not, however, impose more restrictive criteria that would narrow the 1951 Convention refugee definition, or, when signatory to the 1969 OAU Convention, the broader criteria contained therein, such as refusing to recognize as refugees persons with disabilities or who have AIDS, or persons from a particular country or of a particular religion. Such people, if they meet the refugee definition, must be given protection. Appropriate assistance and solutions should be sought for them, in the country of asylum or, for urgent or compelling cases, through resettlement, in another country of asylum.

- ▶ [Guidelines on international protection No. 4: “Internal flight or relocation alternative” within the context of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#), UNHCR, 2003

Internal flight or relocation alternative: What is this?

When examining applications for refugee status, some jurisdictions apply the concept of an internal flight or relocation alternative. This refers to a specific area of the asylum-seeker's country of origin where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him- or herself and live a normal life.

If the possibility of internal flight or relocation is to be considered in the context of refugee status determination, **a particular area must be identified and the asylum-seeker needs to be given an adequate opportunity to respond.**

As part of a holistic assessment of a claim to refugee status, in which a well-founded fear of persecution for a Convention reason has been established in one part of the country of origin, it is necessary to assess whether it is both relevant and reasonable for the refugee to go to live in a specific alternate location within the country.

The assessment of **relevance** should consider whether the prospective area of relocation is practically, safely and legally accessible and whether the refugee would be exposed to a risk of being persecuted or of other serious harm. Where the risk of persecution emanates from a State actor, an internal flight or relocation alternative is not relevant.

The **reasonableness** analysis involves assessing whether the individual would be able to live in the proposed area without undue hardship, taking into account the asylum-seeker's personal circumstances, including past persecution, safety and security, respect for human rights, and the possibility for economic survival.

The concept is not applicable in States party to the 1969 OAU Convention or in the context of the Cartagena Declaration with respect to persons who flee "owing to external aggression, occupation, foreign domination or events seriously disturbing public order". In such cases, those instruments make clear that refugee status applies whether the risk is present in either *part of* or the whole of the country.

Checklist for parliamentarians: Inclusion

To ensure that refugees are recognised in line with international legal standards, parliamentarians are encouraged to:

- ✔ Ensure that the definition of the term refugee used in national legislation includes all the elements contained in the 1951 Convention. The definition should specifically refer to Article 1(A)2 of the 1951 Convention and its 1967 Protocol (and if relevant to Article I, paragraph 1 of the 1969 OAU Convention or to the Cartagena Declaration).
- ✔ If your country is a party to the 1969 OAU Convention, make sure the definition of the term "refugee" includes the additional elements outlined in Article I, paragraph 2 of that Convention.
- ✔ If the 1984 Cartagena Declaration is implemented in national legislation, make sure the definition of the term refugee includes the additional elements outlined in its Conclusion III, paragraph 3.
- ✔ If your State is not yet party to the 1951 Convention, the 1967 Protocol or the 1969 OAU Convention, support pragmatic responses that allow for the recognition on an ad hoc basis of individuals or groups as refugees, and encourage the extension of such protection on a more systematic basis to other refugees in the future.
- ✔ Where draft legislation proposes to regulate specific aspects of the refugee definition, use UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* and UNHCR's [Guidelines on International Protection](#) as reference points to ensure the definition is adequately incorporated in national law.

6.5 What about the situation of Palestinian refugees?

Article 1D of the 1951 Convention states that the Convention shall not apply to persons who are already receiving protection or assistance from another UN organ or agency. In practice, this excludes Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts and who are receiving protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). UNRWA operates in Jordan, Lebanon, Syria, the West Bank and Gaza. (See also Chapter 2.5 – UNHCR’s partnerships with UN agencies and others, UNRWA and the special case of Palestinians.)

This does not, however, mean that Palestinian refugees can never benefit from the protection of the 1951 Convention. Article 1D of that Convention also states that when the protection or assistance of the other UN agency or organ “has ceased for any reason” and the position of the individual has not been definitively settled in accordance with the relevant UN General Assembly resolutions, then the person concerned shall “*ipso facto* be entitled to the benefits of this Convention”.

When Palestinians who are outside UNRWA’s area of operation apply to be recognized as refugees, the meaning of the phrase “ceased for any reason” often arises. This phrase should not be construed restrictively. What is important is whether UNRWA’s protection or assistance has ceased for one or more objective reasons, including whether the individual left UNRWA’s area of operation owing to a real risk to his or her life, physical integrity, security, liberty or other serious protection-related reasons, and whether practical, legal and/or safety barriers prevent him or her from returning to the prior host country and re-availing him- or herself of the protection or assistance of UNRWA.

Where UNRWA’s protection or assistance has ceased, and provided that Articles 1C, 1E and 1F do not apply, the person concerned is entitled *ipso facto* to the benefits of the 1951 Convention. In this way the 1951 Convention avoids overlapping competencies between UNRWA and UNHCR and, in conjunction with UNHCR’s Statute, ensures the continuity of protection and assistance to Palestinian refugees as necessary.

► [UNHCR written intervention before the Court of Justice of the European Union in the case of *El Kott and Others v. Hungary*](#), UNHCR, 2011

6.6 Who should be excluded from refugee status?

Article 1 of the 1951 Convention contains several provisions whereby persons who meet the “inclusion” criteria of the refugee definition are nevertheless not eligible for international protection. It may be the case, as explained above, that they are receiving protection or assistance from a UN organ or agency other than UNHCR (as per the first paragraph of Article 1D discussed above.) But it may also be that they are not in need of international protection for other reasons, or are not deserving of it. These “exclusion” clauses are contained in the in Articles 1E and 1F of the 1951 Convention.

What about people who do not deserve protection?

According to Article 1F of the 1951 Convention, a person is not eligible for protection as a refugee if there are serious reasons for considering that he or she has

- Committed a crime against peace, a war crime or a crime against humanity;
- Committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee; or
- Been guilty of acts contrary to the purposes and principles of the United Nations.

The **rationale for these exclusion clauses** is twofold. First, certain acts are so grave that they render the perpetrator undeserving of refugee protection. Secondly, the refugee protection framework should not stand in the way of serious criminals facing justice.

National legislation should use the language of Article 1F verbatim, as it exhaustively enumerates the grounds for exclusion based on criminal conduct or involvement in acts contrary to the purposes and principles of the United Nations. These grounds for exclusion should not be confused with the exceptions to the *non-refoulement* rule that are set out in Article 33(2) of the 1951 Convention and concern situations where the refugee is a danger to the security of the host country, or to its community.

UNHCR's Executive Committee has called on States to **apply the exclusion clauses "scrupulously"** so as to protect the integrity of the institution of asylum ([Conclusion No. 82 \(XLVIII\)](#)). Properly applied,

the exclusion clauses of Article 1F also ensure that persons responsible for terrorist crimes are not eligible for refugee status (see also Chapter 4.3 – Addressing security concerns without undermining refugee protection). Exclusion can have serious consequences for the individual, so it is important to apply the exclusion clauses **restrictively** and only after a full assessment of the individual circumstances of the case.

For exclusion to be justified, it must be established, on the basis of clear and reliable evidence, that there are serious reasons for considering that the person concerned was individually responsible for acts that fall within one or more of the three categories set out in Article 1F. This **analysis is complex** and not suited to accelerated or simplified procedures, although it may be appropriate to deal with such cases as a matter of priority, for example if they arise in the context of extradition proceedings. (For more on extradition see Chapter 4.2 – Admission to territory and the scope of the *non-refoulement* obligation).

The 1969 OAU Convention reproduces the language of Article 1F of the 1951 Convention in its Article 1(5), and also refers to persons guilty of acts contrary to the purposes and principles of the OAU (now African Union) in Article I(5)(c). This phrase should be read as subsumed within Article 1F(c) of the 1951 Convention, given that the OAU Convention complements the 1951 Convention, and in view of the close connection between the purposes of the African Union and those of the United Nations.

Under Article 1E, if someone is recognized by the authorities of the country where he or she resides as having the same rights and obligations as citizens of that country, he or she is not entitled to benefit from the Convention's protection. Such persons would indeed not need refugee protection, because they already enjoy the protection of a government.

Article 1F address the much more complex issue of persons who are not deserving of refugee protection.

Checklist for parliamentarians:

Exclusion

To ensure that people undeserving of refugee protection are dealt with fairly through exclusion rules, parliamentarians are encouraged to:

- ✔ Support the use in national legislation of the exact wording of the exclusion clauses of the 1951 Convention and, where applicable, the 1969 OAU Convention. Oppose the addition of any further grounds for exclusion.
- ✔ Advocate against the examination of exclusion issues in simplified or accelerated procedures. Similarly, oppose any consideration of possible exclusion in the context of a determination of the admissibility of a claim. Exclusion is a complex matter that merits a full examination.
- ✔ Ensure that legislation does **not** contain provisions for exclusion from refugee status on the basis that an asylum-seeker committed a serious non-political crime in the host country, since Article 1F(b) refers to crimes committed *before* admission, that is, before entry into the country. Persons suspected of crimes in the host country should have their cases dealt with under the criminal laws of the country.
- ✔ If domestic legislation contains definitions of serious and non-political crimes, consult and take account of the considerations set out in UNHCR's [Guidelines on international protection on exclusion](#) at paras. 14–15 and at paras. 37–43 of the corresponding [Background note](#), to ensure that any definitions are in line with this guidance.

- ▶ [Guidelines on international protection No. 5: Application of the exclusion clauses: Article 1F of the 1951 Convention relating to the Status of Refugees](#), UNHCR, 2003
- ▶ [Background note on the application of the exclusion clauses: Article 1F of the 1951 Convention relating to the Status of Refugees](#), UNHCR, 2003
- ▶ [UNHCR Note on the interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees](#), UNHCR, 2009

6.7 Complementary and temporary forms of international protection

The 1951 Convention and its 1967 Protocol remain the core international instruments for ensuring the protection of people who are forcibly displaced across international borders. They are complemented by regional refugee instruments, notably the 1969 OAU Convention and the 1984 Cartagena Declaration. The OAU Convention and Cartagena Declaration contain broader refugee definitions that protect persons who are compelled to leave their country because of violent or disruptive situations. In other regions, however, such persons may not always be recognized as refugees, but may still require international protection on a longer-term or temporary basis. Complementary and temporary forms of protection have been developed to address this challenge.

Complementary forms of protection

Some States provide complementary forms of protection to individuals who do not qualify as refugees under international or regional law, but who nevertheless are in need of international protection because they are at risk of serious harm in their countries of origin and cannot be protected there. Complementary forms of protection are regulated in national law. Sometimes they extend to persons who cannot return to their countries for practical reasons, including because of natural or ecological disasters, or where specific compassionate grounds prevail.

It is important that such forms of protection are genuinely complementary and do not undermine refugee protection. Asylum-seekers who fulfil the refugee criteria under the 1951 Refugee Convention or broader refugee criteria included in the regional refugee instruments should be accorded refugee status.

The rights attached to complementary forms of protection differ widely from one country to another. Some States extend all the rights normally given to refugees, while others provide little more than protection from *refoulement*. Experience shows that people in need of complementary forms of protection, like refugees, may not be able to return home for many years. To enable them to live a dignified life in the meantime they need a secure legal status, access to the labour market, identity and travel documents, and the possibility to reunite with family members, among other rights.

- ▶ [Conclusion No. 103 \(LVI\) on the provision of international protection including through complementary forms of protection](#), UNHCR Executive Committee, 2005

Complementary forms of protection: Guiding principles

UNHCR Executive Committee [Conclusion No. 103 \(LVI\) on the provision of international protection including through complementary forms of protection](#) sets out a number of guiding principles on the issue. These include:

- Complementary forms of protection can help to ensure that international protection is provided to persons who are entitled to protection from *refoulement*, but who do not meet the refugee definition contained in the 1951 Convention and 1967 Protocol or in regional refugee law;
- The criteria for refugee status set out in the 1951 Convention and 1967 Protocol should be properly interpreted, so that all persons who fulfil these criteria are duly recognized and protected as refugees, rather than being accorded a complementary form of protection;
- In extending complementary forms of protection, States should seek to provide beneficiaries with the highest degree of stability and certainty, by ensuring respect for their human rights and fundamental freedoms without discrimination, including due regard for the principles of family unity and the best interest of the child;
- A single, comprehensive status determination procedure conducted by a central expert authority allows for the assessment of eligibility for refugee status to be followed directly by an assessment of any other international protection needs. This makes it possible to ensure that all international protection needs are considered, without undermining refugee protection.

Checklist for parliamentarians:

Complementary protection

To ensure that people in need of international protection receive it in line with international legal standards and State practice, parliamentarians are encouraged to:

- ✔ In countries not covered by the 1969 OAU Convention or the 1984 Cartagena Declaration, support the introduction of complementary forms of protection as a pragmatic way to meet the protection needs of individuals who have been compelled to leave their country because of a violent or disruptive situation.
- ✔ Take care that domestic legislation on complementary forms of protection does not undermine the refugee protection regime by clarifying in law it is first determined whether an asylum-seeker is a refugee before assessing whether she or he is eligible for a complementary form of protection.
- ✔ Promote the inclusion in legislation of provisions providing a secure legal status for persons eligible for a complementary form of protection.
- ✔ Where domestic legislation provides for exclusion from complementary protection, ensure that the criteria applied are the same as those set out in Article 1F of the 1951 Convention, as these exclusion grounds may affect persons who are refugees.
- ✔ Promote provisions which ensure equal treatment for refugees and beneficiaries of complementary forms of protection

Temporary protection or stay

UNHCR's Executive Committee has recognized that temporary protection can provide a provisional protection response, in particular in situations of mass influx, as well as in the context of other humanitarian crises. Temporary protection should not be used as a substitute for refugee protection or other complementary forms of protection. Temporary protection can be helpful when it is not feasible for States to assess whether other forms of international protection apply, until such time as that is again possible.

Temporary protection or stay arrangements are pragmatic tools of international protection that reflect States' commitment and practice of offering sanctuary to those fleeing or affected by humanitarian crises.

- ▶ [UNHCR Guidelines on Temporary Protection or Stay Arrangements](#), February 2014'.

State practice

Temporary protected status – In the [United States](#), the authorities may designate a foreign country for temporary protected status (TPS) if conditions in that country temporarily prevent nationals from returning safely. This includes situations of armed violence and conflict, natural disaster or an epidemic, or other extraordinary and temporary conditions. An individual who holds TPS may not be removed from the United States or detained on the basis of his or her immigration status. TPS beneficiaries may obtain employment authorization and may be permitted to leave and return to the United States. However, TPS is a discretionary and temporary benefit that does not lead to lawful permanent residence.

- ▶ [Guidelines on temporary protection or stay arrangements](#), UNHCR, 2014

State practice

Humanitarian and temporary protection for people displaced by disasters: A number of countries provide for humanitarian or temporary protection for people displaced by environmental or natural disaster. Following the earthquake in Haiti in 2010, for example, States adopted varying approaches to provide humanitarian protection to Haitians who fled the disaster or who were outside the country at the time of the earthquake and unable to return home because of it. In **Brazil**, for instance, a series of “Normative Resolutions” allowed the authorities first to issue five-year humanitarian visas to Haitians who had fled the earthquake and subsequently to issue thousands of permanent residence visas both to Haitians on Brazilian territory and through the Brazilian Embassy in Port-au-Prince. In **Argentina**, migration regulations permit the “provisional disembarkation” and admission on humanitarian grounds of individuals who do not fulfil the regular conditions for admission. Argentina also provides that individuals fleeing man-made natural or environmental disasters can obtain the special migration status of “transitory residents”. In Europe, legislation in [Finland](#) provides that persons who do not qualify for refugee status or for subsidiary protection may receive humanitarian protection if they cannot return to their country of origin, including “as a result of an environmental catastrophe”. It also provides for temporary protection in the context of a mass influx, including one resulting from an environmental disaster. In [Sweden](#), legislation defines persons who are “unable to return to the country of origin because of an environmental disaster” as being in need of protection, and provides a residence permit.

Temporary protection: What does this involve?

Temporary protection:

- Is an emergency response to the large-scale movement of people that provides immediate protection from the effects of crises or disasters and minimum standards of treatment;
- Can serve to provide protection to a broader category of persons than those covered by the 1951 Convention, the regional refugee instruments, or complementary forms of protection;
- Has evolved over time as an appropriate response, including to humanitarian crises and complex or mixed cross-border population movements, centred on multilateral cooperation and an equitable sharing of burdens and responsibilities;
- Could also be usefully employed where the nature of the protection needs or the volatility of the situation calls for a time-bound response, at least initially;
- Needs to be flexible to react speedily to a crisis or disaster, while providing a minimum level of protection;
- Should provide at least the standards of treatment set out in [Executive Committee Conclusion No. 22](#) on the protection of asylum-seekers in situations of large-scale influx (See also Chapter 5.4 – Standards of treatment for refugees arriving in large numbers: What to do?), as well as a formal legal status, explicit protection from violence, including sexual and gender-based violence, and special protection for particular groups, such as persons with disabilities;
- Is generally not appropriate in situations that have their roots in long-standing conflicts or events, where return to the country of origin is not likely in the short term; and
- Calls for constant monitoring of its continuing suitability as a protection tool in a particular situation.

People fleeing in the context of disasters and climate change: What about them?

Displacement as a result of disasters, including displacement across international borders, is already a reality in many parts of the world. It is likely to increase, since the magnitude and frequency of such disasters can be expected to grow as a result of climate change.

The majority of such displacement is likely to be within a country's borders, as internally displaced persons. **Primary responsibility lies with States** for preventing displacement when possible and, when it cannot be avoided, for protecting displaced people as well as finding durable solutions for their displacement.

Existing international and regional mechanisms, laws and policies do not sufficiently address the challenge of cross-border displacement in the context of disasters. There is no international instrument that protects people who are displaced across borders as a consequence of climate change. Under international refugee law, people fleeing climate change-induced situations will not normally qualify as refugees. (See Chapter 6.4 The refugee definition: Who is included? Can someone fleeing the effects of climate change be a refugee?)

There is nevertheless **a wide variety of measures that can be used** for the protection of disaster-affected people who have fled across borders. These include issuing humanitarian visas, stays of deportation, granting refugee status in exceptional cases, bilateral or regional arrangements on free movement of persons, expediting normal migratory channels, or the issuance of work permits. Thus far, however, the approach of States has largely been ad hoc and uncoordinated.

The Nansen Initiative and Platform on Disaster displacement

In 2012, Switzerland and Norway launched the [Nansen Initiative](#) to build consensus on a protection agenda addressing the needs of people displaced across borders in the context of disasters and climate change. This process involved regional consultations with governments and civil society actors, including in the Pacific, Horn of Africa, Central America, Southeast Asia, and South Asia.

In 2015, these efforts culminated in the endorsement by 109 States of the Nansen Initiative's [Agenda for the Protection of Cross-border Displaced Persons in the Context of Disasters and Climate Change](#). The Nansen Protection Agenda provides States with practices to better prevent and prepare for disaster related cross-border displacement. It also contains steps to protect and respond predictably to the needs of persons forced to flee in the context of disaster or the effects of climate change. It is comprehensive, addressing the protection of cross-border displaced persons and management of disaster displacement risk in the country of origin. This Agenda supports an approach that focuses not on the development of a new international instrument but rather on the integration of effective practices by States and sub-regional organizations into their own normative frameworks in accordance with their specific situations and challenges.

In 2016, the State-led process that succeeded in the adoption of the Nansen Protection Agenda was carried forward by the [Platform on Disaster Displacement](#) (PDD), which UNHCR supports. It aims to ensure implementation of the recommendations of the Nansen Protection Agenda.

- ▶ [Legal Considerations on Refugee Protection for people fleeing conflict and famine affected countries](#), UNHCR 2017
- ▶ [Key Concepts on Climate Change and Disaster Displacement](#), UNHCR, 2017

Checklist for parliamentarians:

Temporary protection or stay

To address international protection needs through temporary protection or stay in appropriate cases, in line with international law and State practice, parliamentarians are encouraged to:

- ✔ If temporary protection is introduced in national legislation, encourage its use as a provisional protection response to situations of mass influx and humanitarian crisis.
- ✔ Support the provision of a formal legal status for persons granted temporary protection or stay. Ideally, this status should last initially up to a year, and be extendable to a maximum of three years.
- ✔ At a minimum, ensure that persons granted temporary protection or stay are provided with protection from *refoulement* and treatment consistent with basic human rights standards as outlined in [Executive Committee Conclusion No. 22](#) (see also Chapter 5.4 – Responding to mass influx, Standards of treatment for refugees arriving in large numbers: What to do?) and applicable international or regional human rights law.
- ✔ Ensure that beneficiaries of temporary protection or stay arrangements are able to enter the asylum procedure, and that access to asylum procedures is not precluded upon expiry of the temporary protection regime.
- ✔ Investigate the possibility of providing for a temporary or humanitarian status to respond to the protection needs of persons fleeing disasters and the effects of climate change who do not fulfil the 1951 Convention refugee definition.
- ✔ Use regional and/or bilateral forums to establish common understandings and approaches to cross-border displacement as a result of disasters and the effects of climate change, whether this be through issuing humanitarian visas, stays of deportation, granting refugee status in exceptional cases, using bilateral or regional arrangements on free movement of persons, expediting normal migratory channels, or the issuance of work permits.

Chapter 7

Making asylum procedures fair and efficient



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7.1 Introduction

The 1951 Convention leaves it to each contracting State to establish the procedure it considers most appropriate for determining refugee status and other international protection needs. The procedure adopted needs both to be in line with international refugee protection and human rights obligations and to take account of the country's particular constitutional and administrative structure.

This chapter sets out the core elements and procedural standards necessary for fair and efficient asylum procedures in keeping with international refugee protection principles. It also outlines a number of tools to expedite processing. In many cases a single procedure may prove fairer and more efficient.

Depending on the context, mechanisms developed in some countries, which may have greater resources, different administrative and legal traditions, and/or larger numbers of arrivals, may well not be relevant in other countries. Many of the issues in this chapter may therefore only be applicable in some jurisdictions.

Minimum procedural guarantees and principles of due process as reflected in human rights treaty obligations and administrative law systems around the world should, however, be in place in all asylum procedures.

The subsections of this chapter examine:

- Fair and efficient asylum procedures;
- Minimum procedural guarantees;
- Ensuring confidentiality in line with relevant data protection principles and standards;
- Registering and adjudicating claims, including at the border and at airports;
- Admissibility decisions, including the first country of asylum and safe third country concepts and arrangements for allocating responsibility for examining asylum claims that are applied at this stage in some countries;
- The interview and decision-making process at first instance, including credibility assessment;
- Accelerated procedures, including for manifestly unfounded claims;
- Subsequent applications and abandonment or withdrawal of applications;
- Appeals and effective remedy;
- Asylum-seekers with specific needs in the asylum procedure, including children, unaccompanied and separated children, women, families, survivors of violence and torture, traumatized persons, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, and persons with disabilities;
- Recognition of refugee status, including the grant of a secure and durable form of legal residency status and the issuance of identity papers and travel documents;
- Cancellation, revocation and cessation of refugee status; and
- Persons found not to be in need of protection, including their return.

The obligations and rights of persons who are recognized as refugees or otherwise found to be in need of international protection, including the rights set out in the 1951 Convention and in international human rights law more generally, are covered in Chapter 8.

Structures to support fair and efficient asylum procedures: What are these?

Ensuring that appropriate **status determination structures** are in place, both at the first instance and at appeal, means that parliamentarians need to:

- Identify the authority/ies responsible for registering asylum claims – this may be the same body as the first instance determination body or a separate one;
- Identify a single, expert central authority responsible for receiving applications and determining the international protection needs of persons seeking asylum, including responsibility for any admissibility, border and accelerated procedures, if these are provided for;
- Identify an independent expert tribunal or other body responsible for assessing appeals in order to ensure an effective remedy against a negative decision at the first instance;
- Set out in legislation the responsibilities of these authorities and the requirement that they be impartial and appropriately qualified; and
- Allocate sufficient personnel and resources to these authorities, so that they can build capacity, provide training in applicable international refugee and human rights law and appropriate interviewing techniques, and thereby enable officials to accomplish their task expeditiously and fairly.

7.2 Fair and efficient asylum procedures

Fair and efficient asylum procedures are an essential element in the full and inclusive application of the 1951 Convention. They enable a State to identify those who are refugees under the 1951 Convention and others who may need international protection, as well as those who are not. Procedures based on fair standards and consistency in decision-making are essential for the integrity of State asylum systems based on the rule of law.

In order for parliamentarians to ensure that asylum-seekers have effective access to asylum procedures and that States can uphold their international obligations, they need to ensure that the appropriate status determination structures are in place; that the responsibilities of the authorities involved are clearly set out in national legislation; that procedures, including those at the border, are clear; and that minimum procedural guarantees are provided and upheld.

Establishing a **single procedure** in which all potential international protection needs are assessed in one process enables the claim to be considered in its entirety with regard to both 1951 Convention/ regional refugee definitions and any complementary/subsidiary protection needs. A single procedure may, in many cases, represent the clearest and swiftest means of identifying those in need of international protection. Particularly in countries where there are relatively few asylum claims, a single, prompt and efficient decision-making procedure is likely to be the most efficient and most appropriate approach.

Investing in measures to enhance the **quality of decision-making at first instance** is another strategy that can support correct decision-making and reduce pressure at the appeal stage and the rate of overturn. Such measures involve putting in place mechanisms for continuous evaluation, quality review of decision-making and quality assurance.

If a State faces challenges dealing with a large caseload or backlog, there are also **procedural case management approaches** that can be used or developed to help streamline and speed up the determination of an asylum-seeker's international protection needs. These include merged registration and simplified or group-based processing, for instance for applications from countries where recognition is likely. As with accelerated procedures (discussed in greater detail below at Chapter 7.8 Accelerated procedures), these approaches need to be applied with full respect for procedural safeguards and high standards of quality.

- ▶ [Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), UNHCR, 1979, reissued 2011
- ▶ [Global consultations on international protection/Third track: Asylum processes \(Fair and efficient asylum procedures\)](#), UNHCR, 2001
- ▶ [Procedural standards for refugee status determination under UNHCR's Mandate](#), UNHCR, 2003

Fair and efficient procedures: What do they do?

If asylum procedures are both fair and efficient, they

- Benefit refugees, as they can receive a decision promptly, be assured of safety, and begin to rebuild their lives;
- Benefit the government, as claims are handled expeditiously and in a cost-effective manner, as well as with due respect to human rights principles;
- Decrease the overall demands on the reception system, discourage misuse of the asylum system, and avoid protracted periods of uncertainty for the asylum-seeker;
- Make an important contribution to improving the capacity of States to manage arrivals of non-nationals;
- Help the public to be more inclined to support refugee protection, since it is clear that national authorities are responding to the presence of asylum-seekers; and
- Identify promptly individuals who are not entitled to international protection, thus also facilitating their return.

Checklist for parliamentarians:

Fair and efficient asylum procedures

To promote the development and operation of fair and efficient asylum procedures in line with international law and good practice, parliamentarians are encouraged to:

- ✔ Ensure that legislation designates a single clearly identified expert authority with responsibility for examining applications for refugee status and taking a decision in the first instance, including for any admissibility, border and accelerated procedures, if these are provided for. The designated body may be administrative or quasi-judicial, according to the prevailing legal system in the country concerned. It requires adequate resources, including qualified and trained staff and quality country-of-origin services, for the effective exercise of its duties. (For more see below Chapter 7.7 The interview and decision-making process at first instance.)
- ✔ Ensure that legislation also designates a tribunal or other independent, expert authority responsible for assessing appeals in order to ensure an effective remedy for a negative decision at the first instance. (For more see below Chapter 7.10 Appeals and effective remedy.)
- ✔ If legislation provides for other forms of international protection beyond refugee status, support the introduction of a single procedure to identify international protection needs, so that each case is examined in its entirety by the same authority.
- ✔ Ensure that legislation and policies incorporate the minimum procedural standards and, as relevant, other elements as set out in more detail in subsequent sections.
- ✔ Support the fairness and efficiency of decision-making by providing sufficient funding and resources to ensure that:
 - Officials, including those at the border, those registering and those determining claims, have the necessary competence, including by allocating sufficient resources for the recruitment of suitably qualified staff and for their training on an ongoing basis; and
 - Country of origin and other information services are available to enable the asylum authorities to make an informed and accurate assessment of each case, and that these services provide accurate, impartial and up-to-date knowledge of the asylum-seeker's country of origin or habitual residence, of its laws and their application in practice.

7.3 Minimum procedural guarantees

The procedures for determining whether to recognize an asylum-seeker as a refugee vary around the world, reflecting the diversity of legal traditions, national contexts, and availability of resources. Regardless of the particular system in place, minimum procedural or due process standards and safeguards need to be guaranteed for all applications, including those submitted at the border and, where these are used, in admissibility accelerated, simplified or otherwise streamlined procedures.

An asylum-seeker has the **right to be heard**, with due process guarantees and within a reasonable time, at first instance, by a single, central, and specialized authority previously established by law and, at appeal, before an authority or tribunal different from, and

Minimum procedural or due process guarantees: What are these?

Building on Executive Committee Conclusions and on international human rights standards, such as the right to be heard and to an effective remedy, minimum procedural/due process guarantees that need to be reflected in legislation and implementing regulations include:

- **The official to whom the asylum-seeker addresses him- or herself at the border or in the territory should be required to act in accordance with the principle of *non-refoulement*.** He or she should have clear instructions for dealing with cases where someone expresses a fear of being returned, and should be required to refer such cases to be examined and decided by the single, central specialized authority responsible for asylum applications.
- **The asylum-seeker should receive the necessary information and guidance** as to the procedure to be followed in a language and manner he or she understands.
- **The application should be examined within the framework of specially established procedures, by a clearly identified authority and by qualified personnel** with the necessary knowledge and experience, and an understanding of asylum-seekers' particular vulnerabilities, difficulties and needs.
- **The asylum procedure needs at all stages to respect data protection and confidentiality principles.** (See also Chapter 7.4 Ensuring confidentiality in line with relevant data protection principles and standards, below.)
- **The asylum-seeker should be given the necessary facilities, including the services of a competent interpreter, as well as access to legal advice and representation,** for submitting his or her claim to the authorities concerned. Where free legal aid is available, asylum-seekers should have access to it in case of need. Asylum-seekers should also be given the opportunity, of which they should be duly informed, to **contact a representative of UNHCR.**
- **The asylum-seeker should be given access to the report of the personal interview and his or her approval should be sought on the contents of this report** in order to avoid misunderstandings and to clarify contradictions. (See also Chapter 7.7 The interview and decision-making process at first instance, below.)
- **While the burden of proof in principle rests on the asylum-seeker, the duty to ascertain and evaluate all the relevant facts is shared between the asylum-seeker and the examiner.** The asylum-seeker needs to present his or her claim as fully as possible and with evidence supporting his or her claim as available. The examiner has an active responsibility to use the means at his or her disposal to make further enquiries and gather information relevant to the claim. (See also Chapter 7.7 The interview and decision-making process at first instance, below.)
- **The reasons for not granting refugee status, in fact and in law, should be stated in the decision.** Such information needs to be shared with the asylum-seeker in writing as soon as necessary for allowing an appeal to be prepared and lodged in due time. The asylum-seeker should be informed verbally in a language he or she understands about the reasons for the decision, about his or her right to appeal a negative decision, and about the applicable timeframes and procedures for lodging an appeal. (See also Chapter 7.7 The interview and decision-making process at first instance, below.)
- If the asylum-seeker is not recognized, he or she should be given **a reasonable time to appeal for a formal reconsideration of the decision to a separate, independent authority,** whether administrative or judicial. To be effective, this remedy must provide for a review of the claim by a court or tribunal, and the review must examine both facts and law based on up-to-date information. It must also permit the asylum-seeker to remain on the territory until a final decision has been made on the claim except in very limited cases. (See also Chapter 7.10 Appeals and effective remedy.)

Checklist for parliamentarians:

Minimum procedural guarantees

To ensure respect for international standards are observed through application of minimum procedural guarantees, parliamentarians are encouraged to:

- ✔ In order to ensure that minimum procedural/due process standards and safeguards are in place, ensure that legislation and/or implementing regulations incorporate all of the guarantees listed above, including by:
 - Assigning clear responsibilities for relevant authorities and their personnel for providing necessary information and guidance and for acting in accordance with international refugee law, including notably the principle of *non-refoulement*;
 - Establishing specific asylum procedures using qualified personnel;
 - Stipulating that asylum-seekers have the right to legal advice and representation, the services of a competent interpreter, and the opportunity to contact UNHCR, assigning responsibility for informing them of these rights to relevant authorities, and providing for free legal aid in case of need where this is available;
 - Stipulating that the asylum-seeker has the right to access the report of the personal interview and the opportunity to clarify apparent inconsistencies in a further interview;
- Stipulating that while the asylum-seeker must present a claim, the duty to ascertain and evaluate all the relevant facts is shared between the asylum-seeker and the examiner;
- Requiring the relevant authority to provide a written decision in negative decisions that gives reasons for not granting refugee status, in fact and in law, and share this information with the asylum-seeker in writing as soon as necessary for allowing an appeal to be prepared and lodged in due time;
- Requiring the asylum-seeker to be informed verbally in a language he or she understands about the reasons for the decision, about his or her right to appeal a negative decision, and about the applicable timeframes and procedures for lodging an appeal;
- Fixing a reasonable time within which an asylum-seeker who is not recognized can appeal for a formal review of the decision by an authority, court or tribunal that is separate from and independent of the authority which made the original decision and is required to examine both facts and law based on up-to-date information and permitting the asylum-seeker to remain on the territory until a final decision has been made on the claim, except in very limited cases (as outlined at Chapter 7.10 below).
- ✔ Ensure that sufficient resources are allocated to enable these guarantees to be upheld in practice.

independent of, the first instance. The right to be heard requires that the asylum-seeker be allowed the opportunity to lodge an asylum claim before the competent authority, which presupposes that he or she is first granted access to safety and provided protection from *refoulement*, including non-rejection at the border and protection against indirect *refoulement*. An asylum-seeker also has a **right to an effective judicial remedy** for protection against acts that violate his or her fundamental rights.

▶ [Conclusion No. 8 \(XXVIII\) Determination of refugee status](#), UNHCR Executive Committee, 1977

▶ [Procedural standards for refugee status determination under UNHCR's Mandate](#), UNHCR, 2003

7.4 Ensuring confidentiality in line with relevant data protection principles and standards

The asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such an asylum application. Assuring confidentiality is essential to creating an environment of security and trust conducive to the disclosure of all relevant information relating to the claim, as is needed for its proper and accurate assessment.

Data protection principles and human rights law standards require that sensitive personal data should be kept confidential and may not be disclosed to third parties unless the person concerned has given their informed consent. Any such disclosure should be necessary and proportionate to a specific and legitimate purpose.

As a general rule, States should therefore refrain from revealing any information about a person's status, whether as an asylum-seeker or a refugee, to the authorities of another State unless the individual concerned has given express consent to the sharing of such information. This is particularly relevant where the other State is the refugee's country of origin. It applies with regard to the refugee's personal data as well as any elements pertaining to his or her asylum claim, including the very fact that an asylum application had been submitted.

Disclosure of such information could expose the individual concerned and/or family members or associates to serious danger and/or give rise to additional protection risks that would preclude return. Disclosure without a legitimate basis for doing so, or of more information than is necessary for the purpose, would constitute a breach of the refugee's right to privacy.

There are, however, exceptions to data protection principles that may affect asylum-seekers and refugees. UNHCR's [Executive Committee](#) has, for instance, recognized that the appropriate sharing of some personal data can assist States to combat fraud, to address irregular movements of refugees and asylum-seekers, and to identify those not entitled to international protection, as long as this is in line with data protection principles and international human rights law obligations.

These principles and obligations require that personal data should only be transferred to a national law enforcement agency or national court:

- If it is necessary for the purposes of the detection, prevention, investigation, or prosecution of a serious criminal offence, in particular in order to avoid an immediate and substantial risk to the safety and security of an individual or the public;
- If the requesting law enforcement agency or court is competent in relation to the detection, prevention, investigation or prosecution of the offence in question;
- If the transfer will substantially assist the law enforcement agency or court in the pursuit of these purposes and that the personal data cannot otherwise be obtained from other sources; and

Checklist for parliamentarians:

Ensuring confidentiality in line with relevant data protection principles and standards

To ensure respect for confidentiality and data protection principles and standards, parliamentarians are encouraged to:

- ✔ Bearing in mind the potential risks to asylum-seekers and refugees, support the inclusion in legislation of provisions safeguarding the confidentiality of information relating to asylum-seekers and refugees personal data, including fingerprints and other biometric data.
 - ✔ Where national data protection legislation is not very developed, consider including appropriate safeguards for ensuring confidentiality in the asylum legislation.
 - ✔ Ensure that legislation sets out clearly that where information about an asylum-seeker or refugee is requested by another State data protection principles and international human rights law obligations must be respected and that personal data may only be transferred to a national law enforcement agency or national court where the criteria outlined above are fulfilled.
- ✔ Ensure that regulations make clear that all staff, including border guards, security staff, reception centre staff, counsellors, interpreters, legal advisers, and medical practitioners, who work with asylum-seekers and refugees, have a duty to ensure the confidentiality of information received from or about asylum-seekers and refugees.
 - ✔ If legislation is proposed allowing law enforcement authorities to have access to asylum databases, remind others of the risks that this brings in terms of creating presumptions of criminal suspicion, when seeking asylum is not a crime; of fuelling misperceptions about links between asylum and crime; and of fuelling xenophobia and intolerance.
 - ✔ Oppose any provision in legislation that might permit the authorities to seek information needed to assess an asylum application from the alleged persecutor, as this may result in additional protection risks for the asylum-seeker and his or her family members and dependants upon return, and/or jeopardize the liberty and security of his or her family members or associates still living in the country of origin.
- If the transfer does not disproportionately interfere with the right to privacy or other human rights of an asylum-seeker or refugee or a family member or associate of that person.

In the case of data in relation to victims and witnesses, their consent to the transfer of data must always be obtained. (For more on confidentiality considerations in the context of extradition, see Chapter 4.2 Admission to territory and the scope of the *non-refoulement obligation*, Extradition proceedings.)

In some countries law enforcement authorities are allowed to have access to asylum databases. It should be remembered, however, that this exposes asylum-seekers to a greater likelihood of criminal suspicion than others in the population, which may violate the principle of non-discrimination. It may well also fuel misperceptions about links between asylum and crime, and fuel xenophobia and intolerance. This may be counter-productive in terms of the effective management of migration flows and avoiding social tensions.

► [Policy on the protection of personal data of persons of concern to UNHCR](#), UNHCR, 2015

7.5 Registering and adjudicating claims

All asylum-seekers, in whatever manner they arrive within the jurisdiction of a State, should have access to procedures to adjudicate their claim that are fair, non-discriminatory and appropriate to the nature of their claim.

UNHCR's Executive Committee recommends in its [Conclusion No. 91 \(LII\) on registration of refugees and asylum-seekers](#) that the registration process should:

- Be conducted in a non-intimidating, non-threatening and impartial manner, with due respect for the safety and dignity of refugees;
- Abide by the fundamental principles of confidentiality;
- Be easily accessible and take place in a safe and secure location;
- Be conducted by personnel who are adequately trained and with a sufficient number of female staff, who all have clear instructions on the procedures and requirements for registration; and
- Register asylum-seekers (in principle) on an individual basis.

Applications for asylum made **at the border, including at airports**, raise particular questions, since the asylum-seeker is generally held at the border/airport and only given access to the territory if admitted to the full asylum procedure. In these situations, States are understandably concerned to ensure that persons not in need of international protection are dealt with without delay and returns effected promptly where appropriate. This can be problematic, however, when for example, guards at land borders have broadly defined powers that include assessment of the substance of the claim, but may have limited or no expertise in asylum matters. At the border:

- Asylum-seekers should be admitted to the territory of the country and given a temporary right to remain until a final determination of their asylum application is made irrespective of whether or not they possess personal identity or travel documents. If they do not possess identity documentation, this should be provided in accordance with Article 27 of the 1951 Convention.
- Border officials should not decide on asylum applications, but should rather be required to act in accordance with the principle of *non-refoulement* (for more on which see Chapter 4.2 Admission to territory and the scope of the *non-refoulement obligation*) and refer asylum-seekers to the relevant authorities.
- If the situation of someone seeking entry raises issues relating to asylum, the person should be informed about the asylum process and procedures and referred to the central authority responsible for asylum so that a decision on admissibility to asylum procedures can be taken and, where appropriate, his or her claim can be registered and assessed on substance.

Checklist for parliamentarians:

Registering and adjudicating claims

Parliamentarians are encouraged to take the following steps to ensure that asylum claims are fairly and efficiently registered and adjudicated in line with international standards:

- ✔ Ensure that legislation designates the authority/ies authorized to register and assess claims for asylum and that border officials are not given this responsibility, but are required rather to refer persons seeking asylum to the designated authority.
- ✔ Ensure that legislation specifies that all asylum applications, however expressed, should be registered, that the definition of asylum-seeker includes anyone who expresses a wish for asylum, whether a formal application has been lodged or not, and that legislation does not contain any direct or indirect obstacle that prevents individuals in detention, including immigration detention, from submitting an asylum claim.
- ✔ Ensure that the asylum-seeker and all family members accompanying them are registered and issued with appropriate individual documentation, which reflects their status as asylum-seeker(s) and remains valid until the final decision is taken on their asylum application(s).

Claims submitted at the border

- ✔ Ensure that legislation provides that asylum-seekers who submit an application at the border are to be admitted into the territory of the State and given a temporary right to remain there until a final determination on the asylum application has been made irrespective of whether or not they possess personal identity or travel documents.
- ✔ Consider whether it is appropriate, depending on the national context, for legislation to provide that claims submitted at the border, including airports, be assessed on the basis of a special border procedure, usually requiring asylum-seekers to remain confined at the entry point. If this approach is adopted, ensure that the same requirements of due process of law are in place as for applications submitted in the territory. The principle of non-discrimination, as outlined in greater detail in Chapter 8.2 The principle of non-discrimination, requires that all asylum-seekers, irrespective of whether they apply at the border or inside the country, benefit from the same basic principles and guarantees.
- ✔ If legislation denies the right to enter the territory to asylum-seekers who have submitted their claims at the border, ensure that legislation limits this restriction only to manifestly unfounded or clearly abusive claims or to cases where it is necessary to examine if another State is competent to review the asylum application based on bilateral or multilateral agreements (see below Chapter 7.6 Admissibility procedures) and that minimum procedural guarantees are in place for such procedures. Ensure legislation also specifies that even in such cases particularly vulnerable asylum-seekers, such as separated children, older people, person with disabilities, the sick and traumatized, should always be admitted to the territory and their claims processed in the regular procedure (see also below Chapter 7.11 Asylum-seekers with specific needs in the asylum procedure).
- ✔ Consider going to the border to monitor the effectiveness of access to territory and access to the asylum procedure or suggest that the national human rights commission or ombudsperson does so.

Since decisions at the border/airport involve substantive issues and are sometimes made within very tight timeframes, the possibility of an incorrect decision can be higher. It is therefore essential that:

- Appropriate procedural safeguards are in place, at a minimum those included in other accelerated procedures “on shore”;
- Where decision-making deadlines cannot be met, whether for administrative or substantive reasons, the asylum-seeker is allowed entry to the territory and admitted into the regular procedure; and
- Access to legal advice, to UNHCR and to non-governmental organizations (NGOs) working on behalf of UNHCR is assured both at the border and in airport transit zones.

For more information relevant to adjudicating claims see also Chapter 7.7 The interview and decision-making process at first instance, and at appeal, Chapter 7.10 – An effective remedy at appeal. For more on the specific needs of persons such as torture victims, women, children, notably those separated from their family, see Chapter 7.11 Asylum-seekers with specific needs in the asylum procedure.

► [*Conclusion No. 91 \(LII\) on registration of refugees and asylum-seekers*](#), UNHCR Executive Committee, 2001

7.6 Admissibility procedures

Primary responsibility for providing international protection lies with the State in which asylum is sought. Asylum-seekers and refugees should thus ordinarily be processed and provided with protection in the territory of the State in which they have arrived, or which otherwise has jurisdiction over them.

A number of States have nevertheless introduced an admissibility stage to their asylum procedures to determine whether a claim should or should not be considered in substance or on the merits. Such a stage can be used to determine if another State is responsible for examining the substance of a claim. While an authority different from the central authority (such as a border official) may receive the asylum application and conduct an initial interview, no decision on admissibility should be made without referral to the central authority.

When admissibility procedures are used, an asylum-seeker may be refused access to the substantive asylum procedure in the country where the application has been made:

- If the asylum-seeker has already found effective protection in another country (a “first country of asylum”), although an application may only be declared inadmissible on this ground if protection in the country concerned is actually available to, and can be accessed by, the individual concerned; or

First country of asylum: What is this?

The **first country of asylum** concept is used when an asylum-seeker has already found protection in another country, can return there, and can avail him- or herself of such protection.

If a State wishes to return an asylum-seeker to a first country of asylum, it must make an individualized assessment as to whether he or she will be readmitted and can enjoy protection in that State as set out below. The asylum-seeker should also be given an effective opportunity to rebut any presumption that he or she would be protected in the first country of asylum.

- If responsibility for assessing the particular asylum application in substance is assumed by a third country, where the asylum-seeker will be admitted, will be protected from *refoulement*, and will be able to seek and enjoy asylum in accordance with accepted international standards (a “safe third country”).

The resulting decision should either declare the application admissible, in which case a substantive examination of the claim should follow in the country concerned, or inadmissible, in which case the decision should indicate clearly that the application was not examined in substance and should be examined by the third country.

Where States apply such concepts, they should be defined in national law, be justiciable and enforceable before national courts, and conform to the standards described below.

Such procedures are not as such contrary to international refugee protection principles, but a number of requirements need to be met and procedural safeguards should be in place. In particular, an individual assessment of whether the refugee will be readmitted to the first country of asylum and be accorded standards of treatment commensurate with the 1951 Convention and international human rights standards, including importantly protection from *refoulement*. A legal right of stay is essential.

While accession to relevant international and regional instruments may provide an indicator of whether protection and respect for rights are available, the actual practice of States and their consistent compliance with their obligations should be decisive for determining the availability of such protection. Countries where UNHCR is engaged in refugee status determination under its mandate should, in principle, not be considered first countries of asylum. UNHCR often undertakes such functions because the State is not party to the 1951 Convention and/or 1967 Protocol, or does not have the capacity to conduct refugee status determination or to provide effective protection.

An individual refugee must also have an opportunity within the procedure to rebut the presumption that he or she will be protected in the “first country of asylum” based on his or her particular circumstances.

Even where the above criteria are met, rejection of a claim on the basis that a State is a “first country of asylum” which is responsible for the asylum-seeker may not be appropriate where, for example: the security, rule of law and/or human rights situation in the first country of asylum preclude safe and dignified return; where the refugee has links with the current State, such as extended family links, previous residence or long-term visits, cultural ties or others; or other compelling humanitarian reasons apply.

In addition, principles of international cooperation, solidarity and responsibility-sharing among States may require that the State recognize and provide protection to refugees moving onward from other States which are under strain, particularly where a previous State is experiencing a large-scale influx challenging its capacity to receive or protect refugees. The intentions of the asylum-seeker regarding the country in which she or he wishes to request and enjoy protection should, as far as possible, be taken into account.

Procedures in such cases require an individualized assessment of the safety of the country concerned and should explicitly provide for return to be effected *only* if the appropriateness of the transfer has been individually assessed in a procedure with due procedural safeguards prior to transfer. Pre-transfer assessments are particularly important for vulnerable groups, including unaccompanied and separated children. The best interest of the child must be a primary consideration. For a transfer to go ahead this assessment must have determined that the asylum-seeker:

- Will be re-admitted in the territory of the proposed receiving State and permitted to remain there as lawfully present for the duration of the asylum procedure;
- Will be protected against *refoulement*;
- Will have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
- Will be treated in accordance with accepted international standards (for example, through provision of appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; identification of and assistance to persons with specific needs); and
- If recognized as being in need of international protection, will be able to enjoy asylum and access a durable solution.

While accession to relevant international and regional instruments may provide an indicator of whether protection and respect for rights is available, the actual practice of States including their establishment and implementation of fair and efficient asylum procedures, and their consistent compliance with their obligations, should be decisive for determining the availability of such protection.

Safe third country: What is this?

The **safe third country** concept is used in situations where the asylum-seeker could and should have requested asylum in a country that is safe for him or her and is *en route* to the country where asylum is being requested. Thus, a State may decide not to examine the claim in substance, where the previous State, that is, the third country, agrees to readmit the person and examine the merits of his or her claim in a fair and efficient asylum procedure and where the person can if recognized be granted refugee status.

If a State seeks to apply the safe third country concept, the burden of proof in establishing that the third country is safe for the individual asylum-seeker concerned lies with the authorities and they must make an individualized assessment of the safety of the country for the asylum-seeker as set out below. The asylum-seeker should also be given an effective opportunity to rebut the presumption of safety.

Where there is a connection or close links to the current State, these ought to be taken into account. UNHCR has identified such links as including family relations; previously acquired rights in the current State such as previous residence or long-term visits to the country; and linguistic, cultural or other similar links. In addition to the existence of such links, UNHCR considers that the safe third country concept should only be applied where it is reasonable for the asylum-seeker to go to the previous State, including with reference to the established link.

An asylum-seeker must also have an opportunity within the procedure to rebut the presumption of safety and that she or he will be able to access fair and effective asylum procedures or receive protection, if required, based on his or her particular circumstances.

Even where the above criteria are met, rejection of a claim on the basis that a previous State is considered a "safe third country" which is responsible for the asylum-seeker may not be appropriate in a number of circumstances. This includes where the security, rule of law and/or human rights situation in the previous State preclude safe and dignified return or where other compelling humanitarian reasons apply.

In addition, as with the concept of first country of asylum, principles of international cooperation, solidarity and responsibility-sharing among States may require that the State recognize and provide protection to refugees moving onward from other States which are under strain, particularly where a previous State is experiencing a large-scale influx challenging its capacity to receive or protect refugees. The intentions of the asylum-seeker regarding the country in which she or he wishes to request and enjoy protection should, as far as possible, be taken into account.

For asylum-seekers who only transited through a previous State and who never applied for asylum there, the responsibility rests generally with the current State to admit them to the asylum procedure and to assess their claim on the merits.

Uncooperative or undocumented asylum-seekers

Other categories of asylum-seekers, such as those who are uncooperative, who entered the country by irregular means or using false documents or who have destroyed their documents, should not be denied access to asylum procedures on these grounds alone. Such behaviour does not in itself render a claim abusive or fraudulent and any presumption of abuse needs to be examined to determine its validity.

An initial lack of cooperation may result from communication difficulties, disorientation, distress, exhaustion, and/or fear. Those who refuse to cooperate in establishing their identity and/or refuse to provide information concerning their claim despite repeated requests to do so seriously undermine a proper examination of the claim.

Time limits

Time limits within which asylum applications must be made should not be imposed to deny access to a substantive assessment of the claim. An asylum-seeker's failure to submit an asylum request within a certain timeframe or to fulfil other formal requirements should not in itself lead to an asylum request being excluded from consideration, although under certain circumstances a late application can affect its credibility.

If national legislation provides for asylum applications to be submitted "immediately" or "without delay", such requirements should not be interpreted in a rigid manner. An applicant may be a refugee even if his or her application for international protection was not lodged at the earliest possible time. Many valid reasons, unrelated to the credibility of the reasons for the application, may explain why an applicant may not immediately engage with State authorities and legal procedures after arriving in a Member State. These reasons include a perceived need first to consult with a legal counsellor or may be a result of trauma, cultural or gender issues.

Where asylum-seekers are required to submit their claim in person, appropriate provision should be made to ensure that where this is not feasible, for example because an asylum-seeker is in detention, it is possible to submit the claim through a representative or in writing.

The possibility of lodging an asylum claim at any time after arrival is also essential to enable individuals to apply to be recognized as refugees "*sur place*". This may be necessary, for instance, when circumstances in the person's country of origin change during his or her absence or as a result of his or her own conduct, which creates a need for international protection.

- ▶ [Summary conclusions on the concept of "effective protection" in the context of secondary movements of refugees and asylum-seekers \(Lisbon expert roundtable, 9-10 December 2002\)](#), UNHCR, 2003
- ▶ [Guidance note on bilateral and/or multilateral transfer arrangements of asylum-seekers](#), UNHCR, 2013

Checklist for parliamentarians:

Admissibility decisions

- ✔ In order to ensure that the right to seek and to enjoy asylum from persecution is respected, parliamentarians are encouraged to lobby for and ensure that:
 - Legislation does not contain automatic bars to the examination of the substance of asylum applications, save in circumstances where “first country of asylum” and “safe third country” concepts apply, provided that appropriate safeguards as set out in this section are in place;
 - No strict or rigid time limit is imposed for the submission of an asylum claim to the authorities;
 - Legislation specifies that the denial of claims on grounds of admissibility should lead to a claim being declared “inadmissible” and not to a “rejection” of the claim. This differentiation is necessary to reflect adequately the fact that a denial of admissibility is not based on a substantive examination of the claim.

First country of asylum

- ✔ If legislation provides for the application of the first country of asylum concept, advocate that it also require an individual assessment as to whether the protection in the other country is both still genuinely “available”, that is, accessible to the individual concerned, and “effective”, that is, in line with the standards set in the 1951 Convention and the criteria set out above.

Safe third country

- ✔ Discourage the provision in legislation of a possibility of declaring an application inadmissible on the basis that a third country is responsible, normally a country of transit or previous stay (safe third country concept).

Instead promote the negotiation of bilateral or multilateral agreements on responsibility sharing (see below).

- ✔ Where the “safe third country” concept remains in draft legislation, advocate for the following conditions:
 - That an assessment of whether the asylum-seeker can safely be sent to a third country for determination of the claim must be made on an individualized basis and the applicant must be given an effective opportunity to rebut the presumption of safety;
 - That the “safe third country” must be found to be a country where the asylum-seeker will be protected against *refoulement*, persecution and other risks of harm;
 - That the asylum-seeker will be treated with respect for his or her fundamental rights and in accordance with accepted international standards;
 - That the asylum-seeker should already have a connection or close links with the third country, so that it appears fair and reasonable that he or she be called upon first to request asylum there;
 - That the third country expressly agrees to admit the asylum-seeker to its territory and permits him or her to remain there as lawfully present for the duration of the asylum procedure;
 - That the third country expressly agrees to examine the asylum claim in substance in a fair and efficient procedure, and if the asylum-seeker is recognized provides access to the rights set out in the 1951 Convention/1967 Protocol; and
 - That the burden of proof in establishing that the third country is safe for the individual asylum-seeker concerned lies with the authorities wishing to remove the asylum-seeker.

Arrangements for allocating responsibility for examining an asylum claim

Asylum applications should ordinarily be processed in the territory of the State where they arrive or which otherwise has jurisdiction over them, including in the context of interception. This will usually be the most practical means of providing access to reception facilities and to fair and efficient asylum procedures – core components of any protection-sensitive entry system – and of ensuring the protection of the rights of the individual.

While there is no obligation for asylum-seekers to seek asylum at the first effective opportunity, at the same time there is no unfettered right to choose one's country of asylum. The intentions of an asylum-seeker ought, however, to be taken into account to the extent possible.

Arrangements for the allocation or sharing of responsibilities for examining an asylum claim involving bilateral or multilateral agreements determining the country responsible for assessing an asylum application are preferable to unilateral decisions by a State to invoke the responsibility of a third State to examine an asylum claim. To maximize the effectiveness and sustainability of such arrangements, they need to provide for asylum-seekers' rights as well as their intentions to be taken into account regarding the State which is to be responsible for determining their claims and providing protection.

Under certain circumstances, the processing of international protection claims outside an intercepting State could be an alternative to standard "in-country" procedures. Notably, this could be the case when **extraterritorial processing** is used as part of a burden-sharing arrangement to more fairly distribute responsibilities and enhance available protection space.

Such processing would need to be based on bilateral or multilateral arrangements whereby one or more States undertake to process applications for refugee status in another State's territory where the asylum-seekers have arrived, with an agreed commitment to relocate successful applicants and their families to their own territories immediately upon recognition of their status. Any extraterritorial processing and reception arrangements are subject to applicable international and regional legal standards, notably under international refugee and human rights law, as outlined below.

- ▶ [Guidance note on bilateral and/or multilateral transfer arrangements of asylum-seekers](#), UNHCR, 2013
- ▶ [Protection policy paper: Maritime interception operations and the processing of international protection claims: Legal standards and policy considerations with respect to extraterritorial Processing](#), UNHCR, 2010

Arrangements allocating responsibility for examining an asylum claim: What should they contain?

Arrangements for allocating responsibility for examining an asylum claim are best governed by a legally binding instrument. They could help ensure that persons in need of protection are able to access a fair examination of their protection claim and help reduce the lack of clarity among States regarding where responsibility for determining claims and affording protection should lie.

Such arrangements may be beneficial for both States and asylum-seekers, where:

- Applicable refugee and human rights law standards are met, including through an individualized pre-transfer assessment as to the appropriateness of any transfer, and guarantees of admission, protection from *refoulement*, and treatment in accordance with accepted international standards;
- The agreement provides for the allocation of responsibility for determining international protection claims based on defined and rational criteria;
- There are explicit commitments to accept and fulfil protection responsibilities in line with basic safeguards and standards;
- They stipulate clearly the rights and obligations of each State and the rights and duties of asylum-seekers;
- Safeguards and judicial oversight, including an opportunity for the asylum-seeker to challenge the legality of the transfer before a court or tribunal, are incorporated to ensure their implementation respects fundamental rights and protection responsibilities;
- Refugee status determination and/or other processing for international protection needs takes place fairly and efficiently;
- Access to asylum is provided for those found to be refugees, including enjoyment of the rights under the 1951 Convention;
- Access to protection and durable solutions is provided within a reasonable time for refugees and those found otherwise to be in need of international protection; and
- The arrangement improves asylum space in the receiving State, the transferring State and/or the region as a whole.
- Where these guarantees cannot be agreed to or met, transfer would not be appropriate.
- Nor are such arrangements appropriate where they represent an attempt, in whole or part, by a 1951 Convention State party to divest itself of responsibility or where they are used as an excuse to deny or limit jurisdiction and responsibility under international refugee and human rights law.

Checklist for parliamentarians: Arrangements for allocating responsibility for examining an asylum claim

- ✔ If your government wishes to set up an arrangement to transfer responsibility for examining asylum claims with other States that have comparable protection systems, consider this possibility, bearing in mind the need for appropriate guarantees to be in place as summarized above and set out in more detail in UNHCR's 2013 [Guidance note](#) on the issue.

7.7 The interview and decision-making process at first instance

Good quality asylum decisions at the first instance lend greater credibility to the fairness and efficiency of the asylum system overall, including the appeal system. Some key elements of the interview and decision-making process involved are set out below. Depending on the national context, they may be set out in legislation or in implementing regulations.

If parliamentarians are familiar with them this can help them ensure they are incorporated into provisions on decision-making and thereby help strengthen the fairness and efficiency of the asylum system. (For more on the situation of asylum-seekers with specific needs, see 7.11 Asylum-seekers with specific needs in the asylum procedure, below.)

The asylum-seeker should be given the **assistance, time and facilities needed to prepare and lodge his or her request** at the earliest opportunity. This includes access to an interpreter if necessary, legal advice and representation, and other issues as outlined above at 7.3 Minimum procedural guarantees.

The examination of applications for refugee status should in the first instance allow for a **personal interview with a qualified and impartial official** before the decision-makers of the authority responsible for determining asylum claims at first instance. All adult asylum-seekers should be given an interview, not just the principal applicant, since the spouse or other family members may have independent reasons qualifying them for asylum. If an initial interview is made by a border official, there should be a requirement that an asylum-seeker should not be rejected or denied admission without referral to the central authority and that he or she should have an opportunity to apply in person before the central authority. In manifestly well-founded cases, an interview may not always be necessary where a positive decision is expected.

In the interview, **the asylum-seeker should be given the opportunity to fully explain the reasons for the application** and to present information and evidence concerning his or her personal circumstances and conditions in the country of origin. The interview should be held by a qualified official competent to make an individual, objective and impartial decision. Providing the asylum-seeker with this opportunity is an essential component of a fair and efficient procedure for determining claims for international protection.

The asylum-seeker has a responsibility to cooperate with the authorities in the country of asylum. The duty to substantiate the application lies “in principle” with the asylum-seeker. **In the asylum context, however, the burden of proof is shared** between the individual and the State in acknowledgement of the vulnerable situation of the asylum-seeker. **The decision-making authority thus also has a duty to cooperate with the asylum-seeker** to facilitate the information-gathering process and ensure that all the elements that are material to the claim are brought to light. Asylum procedures should reflect both of these factors.

Assessing credibility: Key principles and standards

Assessing the credibility of asylum applications is a core part of the adjudication of asylum claims. When legislation and/or implementing regulations have provisions on the decision-making process it is important for them to incorporate the following:

- The credibility assessment must be conducted on an **individual basis** taking into account the individual and contextual circumstances of the asylum-seeker. It must be **objective, impartial and evidence-based** and should focus on his or her statements on aspects of the claim that are identified as material for qualification for international protection.
- The credibility of the asylum-seeker's statements relating to each material element must be assessed with reference to the following **credibility indicators**: specificity and sufficiency of detail; consistency between the asylum-seeker's oral and written statements and documentation submitted in support of the claim; consistency of the asylum-seeker's statements with country of origin information and other reliable information obtained from family members or witnesses; and plausibility.
- The asylum-seeker should have an **opportunity to clarify and/or provide explanations to address any potentially significant adverse credibility findings**. This stems from the right to be heard.
- The credibility assessment must be **based on the entirety of the available relevant evidence** as submitted by the asylum-seeker and gathered by the determining authority by its own means, including additional explanations and documentary or other evidence provided by the asylum-seeker.
- The assessment of the credibility of the statements of the asylum-seeker must be carried out with **close and rigorous scrutiny**.
- The principle of the **benefit of the doubt** reflects recognition of the considerable difficulties asylum-seekers face in obtaining and providing evidence to support their claim as well as the potentially grave consequences of a wrongful denial of international protection. The application of the benefit of the doubt allows the decision-maker in appropriate circumstances to reach a clear conclusion to accept statements by the asylum-seeker about a material element of the claim as credible where an element of doubt remains.
- The decision-maker should reach **clear and unambiguous findings on the credibility of the statements by the asylum-seeker on material elements of the claim** and explicitly state whether they are accepted as credible or not accepted. A **structured approach** to the assessment of credibility supports the appropriate application of the above-mentioned standards.

The asylum-seeker should be given access to the report of the personal interview and his or her approval should be sought on the contents of the report of the personal interview in order to avoid misunderstandings and to clarify contradictions. Subsequent interviews may be necessary to clarify any apparent inconsistencies and to resolve any contradictions, and to find an explanation for any misrepresentation or concealment of material facts.

The asylum-seeker's own testimony is in many cases the primary if not the only source of evidence available. The personal interview is therefore crucial in enabling the determining authority to identify what elements are material to the asylum-seeker's claim; to gather, as far as possible, from him or her all the necessary information related to those material elements; and to probe the credibility of his or her statements with regard to material elements. Recognition of refugee status is not dependent on the production of

any particular formal evidence and may be based solely on the asylum-seeker's testimony, that is, those statements presented by him or her that are relevant for the determination of the claim and are assessed as credible.

The **process of establishing the facts** generally includes the gathering of relevant information, the identification of the material elements to the claim and the assessment of credibility of the applicant's statements in light of all available evidence. If an element of doubt remains in relation to a statements concerning a particular aspect of the claim, the asylum-seeker should be given the "benefit of the doubt" with respect to these statements, provided the claim is generally credible.

Decisions on applications for international protection should be informed by reliable, accurate and up-to-date **country of origin information** (COI) from a balanced range of sources. UNHCR maintains a COI database, [Refworld](http://www.refworld.org/) (<http://www.refworld.org/>), which is updated on a daily basis with COI documents from a range of pre-selected sources. The Austrian COI centre, [ACCORD](http://www.ecoi.net), also maintains a public COI database (www.ecoi.net). Many countries of asylum have set up their own dedicated centres of expertise on COI, to provide COI in the language of the country of asylum to decision-makers and adjudicators.

Decision-makers should also be trained in appropriate, cross-cultural interviewing skills, including the recognition of and appropriate response to trauma; be familiar with the use of interpreters; and have requisite knowledge of refugee and asylum matters and applicable legislation.

Qualified and impartial **interpreters** should be provided free of charge, as well as access to **legal advice**, the latter being without charge in case of need, if free legal aid is available to nationals similarly situated.

With regard to the decision, the decision-making authority should reach a decision by considering the material facts of the claim, as established based on the statements of the asylum-seeker which are assessed as credible and any other relevant information, and by assessing in light of relevant country-of-origin information whether the asylum-seeker's case meets the refugee criteria or any other protection criteria provided for in the country of asylum. To meet the refugee definition in the 1951 Convention, persecution must be proved to be reasonably possible.

Legislation should specify that all asylum-seekers should receive a written decision automatically, whether on admissibility or the claim itself. If the claim is rejected or declared inadmissible, the decision should be a reasoned one and the asylum-seeker must be informed of his or her right to appeal and about the applicable procedures and timelines. The decision to reject must also contain sufficient information regarding the reasons in fact and law to enable the asylum-seeker to take an informed decision as to whether or not to appeal. Well-reasoned decisions, whether positive or negative, contribute to the transparency and consistency of decision-making.

Checklist for parliamentarians:

Interview and decision-making process at first instance

- ✔ When legislation and/or implementing regulations have provisions on the decision-making process, parliamentarians are encouraged to support the inclusion of provisions that:
 - Assure each adult asylum-seeker a personal interview before a qualified and impartial decision-maker of the authority responsible for determining asylum claims at first instance;
 - Set out the duty of the asylum-seeker to cooperate with the decision-making authority in the process;
 - Specify that the burden of proof is shared between the asylum-seeker and the decision-making authority;
 - Indicate that the credibility assessment: should take into account the asylum-seeker's individual and contextual circumstances; focus on the statements of the asylum-seeker on those aspects of the claim that are identified as material for qualification for international protection and if an element of doubt remains, the asylum-seeker should be given the "benefit of the doubt" with respect to his or her statements on this particular element, provided the claim is generally credible;
- Indicate that when assessing whether an asylum-seeker has a well-founded fear of persecution, decision-makers must determine whether persecution is reasonably possible;
- Require the central asylum authority to provide reliable, accurate, and up-to-date country of origin information to enable decision-makers to assess the claim and to provide initial and ongoing training to ensure decision-makers have the requisite interviewing and decision-making expertise and knowledge of asylum law;
- Ensure that all asylum-seekers receive a written decision, whether on admissibility or the substance of the claim; and
- Require the central asylum authority, if a claim is rejected or declared inadmissible, to issue a written decision setting out the reasons in fact and in law, and to inform the asylum-seeker of his or her right to appeal and about the applicable procedures and deadlines in sufficient time to allow an appeal to be prepared and lodged in due time.

- ▶ [Conclusion No. 8 \(XXVIII\) Determination of refugee status](#), UNHCR, Executive Committee, 1977
- ▶ [Summary of deliberations on credibility assessment in asylum procedures, Expert roundtable, Budapest, Hungary](#), UNHCR, 2015
- ▶ [Beyond proof: Credibility assessment in EU asylum systems: Summary](#), UNHCR, 2013
- ▶ [The heart of the matter – Assessing credibility when children apply for asylum in the European Union](#), UNHCR, 2014

7.8 Accelerated procedures

Many States have introduced accelerated procedures to determine applications that are clearly abusive or manifestly unfounded and can otherwise overburden asylum procedures to the detriment of those with good grounds for requesting asylum. The Executive Committee has addressed this issue in [Conclusion No. 30 on manifestly unfounded or abusive applications for refugee status or asylum](#). Accelerated procedures can also be used to expedite the assessment of manifestly well-founded cases or cases where there are compelling protection reasons.

The term “accelerated procedures” generally refers to a procedure which involves a substantive and individualized assessment of the claim for refugee status, but with an acceleration applied to all or some time lines in the process. This may mean shorter times between registration, interview and decision. Accelerated procedures can be combined with simplified procedures. However, an accelerated procedure does not imply a simplification of any aspect of the substantive determination or the procedure, nor a reduction of procedural fairness guarantees.

If the types of application that may be categorized as clearly abusive or manifestly unfounded can be clearly defined and delimited, and if appropriate safeguards are in place, this approach can be a useful case management tool to expedite decision-making when dealing with a significant caseload.

Where fewer applications are received, a focus on prompt quality decision-making under a single procedure is likely to be a more effective option.

Accelerated procedures: When can these be used?

Accelerated procedures **may be used** for:

- Applications where there are compelling protection reasons, for example in manifestly well-founded cases and/or where a presumption of inclusion applies cases, thus allowing a swift positive decision on the asylum application;
- “Manifestly unfounded” or clearly “abusive” claims as defined by UNHCR’s Executive Committee, that is, applications that are “clearly fraudulent or those that are not related to the criteria for granting refugee status laid down in the 1951 Convention nor to any other criteria justifying the granting of asylum”; and
- Applications by persons from so-called “safe countries of origin”, **but only** if the asylum-seeker has an effective opportunity to challenge the presumption of safety in his or her individual case (see Safe country of origin: How should this be determined? below for more);

... **provided the following procedural guarantees** as set out in UNHCR’s Executive Committee [Conclusion No. 30](#) **are applied**:

- As with all asylum applications, the asylum-seeker should be given a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status (meaning that accelerated procedures are not appropriate at an admissibility stage);
- The manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status; and
- An unsuccessful asylum-seeker should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory. This review possibility can be more simplified than that available in the case of rejected applications which are not considered manifestly unfounded or abusive.

... And when not?

Accelerated procedures **should not be used**:

- For the sole reason that an asylum-seeker does not have identification or travel documents or has used false documents, since this does not in itself make a claim abusive or fraudulent – rather any presumption of abuse needs to be examined to determine its validity (where the asylum-seeker has wilfully destroyed identity documents and refuses to cooperate with the authorities, this can undermine the credibility of his or her claim);
- If there are issues of exclusion or a possible internal flight or relocation alternative – these cases raise complex issues and require a full factual and legal assessment of the merits of the case and so should be referred to the regular procedure; or
- If an asylum-seeker is an unaccompanied or separated child, is traumatized, or is otherwise particularly vulnerable – their application should be prioritized for examination of the substance of the claim under the regular procedure.

Safe country of origin: How should this be determined?

The safe country of origin concept can be used as an effective decision-making tool, but **the general assessment of certain countries of origin as safe** should:

- Be based on precise, reliable, objective, and up-to-date information from a range of sources;
- Take into account both international instruments ratified and relevant legislation enacted there and the actual degree of respect for human rights and the rule of law, the country's record of not producing refugees, its compliance with human rights instruments, and its accessibility to independent national or international organizations for the purpose of verifying human rights issues;
- Be capable of prompt adjustment to take account of changing circumstances in countries of origin, meaning that the procedure for adding or removing countries from any such list needs to be responsive and transparent; and
- Give each asylum-seeker an effective opportunity to rebut any general presumption of safety based on his or her particular circumstances and to have the claim referred to regular procedures and examined in full. For instance, where a State may generally be safe, it may not be safe for men and/or women of a particular religion or ethnicity, for girls at risk of FGM, for lesbians, gays, bisexuals, transgender or intersex (LGBTI) persons, for victims of trafficking, or others.

▶ [Conclusion No. 30 \(XXXIV\) The problem of manifestly unfounded or abusive applications for refugee status or asylum](#), UNHCR Executive Committee, 1983

▶ [Guidelines on human rights protection in the context of accelerated asylum procedures](#), Council of Europe, Committee of Ministers, 2009

Checklist for parliamentarians:

Accelerated procedures for examining the substance of a claim

- ✔ Where legislation has provisions on accelerated procedures, parliamentarians are encouraged to:
 - Support the inclusion of provisions setting clearly defined limits on the kinds of applications that can be considered under these procedures, that is, they should apply only to applications that are manifestly well-founded, clearly abusive and manifestly unfounded, or from safe countries of origin, and not to other categories of claims;
 - Ensure that the list of applications considered clearly abusive or manifestly unfounded is limited to that given in Executive Committee Conclusion No. 30 as set out above;
 - Ensure that any time limits for procedural steps imposed are of a reasonable length so as to permit the asylum-seeker to pursue the claim effectively and to allow the determining authority to conduct an adequate and complete examination of the application; and
 - Ensure that legislation states that accelerated procedures should not be used to determine issues, such as exclusion or internal flight alternative, that require a full factual and legal assessment of the merits of the case, or to applications by unaccompanied or separated children, traumatized persons or others who are particularly vulnerable.
- ✔ Where draft legislation and/or implementing regulations contain provision for channelling asylum-seekers from safe countries of origin into accelerated procedures:
 - Ensure this also provides that each asylum-seeker should have an effective opportunity to challenge the presumption of safety in his or her particular case and have the application referred to regular procedures;
 - Ensure that the procedure for the general assessment of countries of origin as safe is based on precise, reliable, objective and up-to date information, takes account not only of international instruments ratified and laws enacted but also their implementation in practice, and is responsive to changing circumstances in the country of origin; and
 - Ensure that the safe country of origin concept is not used to bar access to the asylum procedure.

7.9 Subsequent application and abandonment or withdrawal of applications

In order to prevent abuse of the asylum system, legislation may provide for **subsequent applications** submitted after a final rejection of the claim on the merits to be subjected to accelerated and/or simplified procedures.

Where a case has been properly and substantively adjudicated in the jurisdiction (and was not, for example, rejected on admissibility grounds or closed following the explicit or implicit withdrawal of an earlier claim), a simple administrative decision not to entertain the application rather than its reconsideration would be in keeping with the *res judicata* principle. This states that a matter may not, generally, be taken to court again once the case has been judged on the merits in a final judgement.

Checklist for parliamentarians:

Subsequent applications and withdrawal or abandonment of applications

- ✔ If legislation provides for subsequent applications to be subject to accelerated procedures, parliamentarians are encouraged to ensure that this only applies to cases that were fully considered on the merits and that such cases are subjected to a preliminary examination to assess in the individual case whether new elements have arisen or new evidence emerged that would warrant examination of the substance of the claim.
- ✔ If the question of withdrawal or abandonment of applications is regulated, parliamentarians are encouraged to support provisions stating that a withdrawal should result in a discontinuation of the procedure only and in closing of the file, and that a reopening of the application is possible without time limits.

or her claim has been properly assessed and adjudicated. Where an individual faces deportation or expulsion for another reason and applies for asylum for the first time, then the application needs to be assessed under either the regular or accelerated procedure depending on the nature of the claim.

With regard to **asylum-seekers deemed to have withdrawn or abandoned their application**, asylum applications should not be rejected merely because the asylum-seeker has failed to fulfil formal obligations, such as a requirement to proceed to a reception facility or failure to appear before the authorities at a given time.

A claim for refugee status may be explicitly or implicitly withdrawn for a variety of reasons not necessarily related to a lack of protection needs. An asylum-seeker may fail to comply with procedural requirements due to circumstances beyond his or her control or there may be another reasonable explanation.

A time limitation on the reopening of a claim, or a rejection of a claim in such circumstances, carries the risk that existing protection needs are not examined and recognized.

In such cases, however, due process as well as the declaratory and forward-looking character of the refugee definition nevertheless require States to assess the asylum-seeker's individual circumstances to determine:

- Whether there are any significant substantive changes to the asylum-seeker's individual situation and/or to the circumstances in the country of origin that may give rise to a *sur place* claim, and
- Whether there is new evidence that relates to and supports the initial claim that warrants examination of the substance of the new claim or reopening the original claim.

There may be valid reasons why an asylum-seeker did not disclose all the relevant facts in the initial claim, such as stigma associated with sexual violence, trauma, and/or misinformation.

The situation is similar if someone applies for asylum when he or she faces deportation or expulsion and his

7.10 Appeals and effective remedy

Standards of due process require an appeal or review mechanism to ensure the fair functioning of asylum procedures and the quality of the first instance decision. All asylum-seekers should therefore have the right to an appeal or review against a negative decision, including a negative admissibility decision, before an authority, court or tribunal that is separate from and independent of the authority that made the original decision.

An effective remedy: What is this?

- In order to ensure that asylum-seekers have an effective remedy at appeal that is in line with international human rights standards, the following guarantees need to be in place:
- The appeal should be considered by an authority, court or tribunal different from and independent of that making the initial decision;
- The asylum-seeker should have prompt access to interpreters and information about procedures, as well as access to legal advice, the latter being without charge in case of need, if free legal aid is available to nationals similarly situated;
- The remedy needs to be available in practice as well as in law, meaning, for instance, that the appellant must have sufficient time to file an appeal and prepare the appeal, or can appeal even if in detention;
- The appeal should permit considerations of both fact and law based on reliable, accurate and up-to-date information;
- An appeal interview or hearing should generally be provided to give the asylum-seeker an opportunity to present and be questioned about the evidence presented at the appeal stage, an interview being less essential if the application is presumed manifestly unfounded or clearly abusive and a face-to-face interview by a fully qualified official has already taken place;
- An appeal interview will, however, generally be required if: (i) the negative decision at first instance was based on credibility findings that were not appropriately addressed during the interview or written assessment; (ii) evidence relevant to the determination of the claim presented by the asylum-seeker was not adequately considered at the first instance interview or in the written assessment; (iii) new evidence supporting the initial application is presented; (iv) procedural fairness was breached at the first instance (for example, because of inadequate interpretation, denial of opportunity to present supporting evidence, inappropriate questioning, confidentiality concerns, etc.);
- An applicant should be able to request an oral hearing on appeal if this is not provided for automatically, and the appeal authority should have the power to conduct a hearing either at the asylum-seeker's request or on its own authority;
- The appeal should in principle have "suspensive effect", that is, the asylum-seeker should be allowed to remain on the territory until a final decision on the appeal has been made. Given the potentially serious consequences of an erroneous determination at first instance, the suspensive effect of asylum appeals is a critical safeguard to ensure respect for the principle of *non-refoulement*, and
- Suspensive effect should be automatic. Exceptions are only possible for manifestly unfounded or abusive applications as defined in Executive Committee Conclusion No. 30 (see Chapter 7.8 Accelerated procedures, above), *res judicata* subsequent cases (see Chapter 7.9 Subsequent application and abandonment or withdrawal of applications, above) and decisions allocating responsibility for determining an asylum claim on the basis of a bilateral or multilateral agreement (see Chapter 7.6 Admissibility procedures, above). Even in these cases, the appellant should have an effective possibility to apply for suspensive effect.

Checklist for parliamentarians:

Appeals and effective remedy

- ✔ To ensure respect for international standards, parliamentarians are encouraged to ensure that legislation on appeals:
 - Provides for asylum-seekers whose claims have been rejected at first instance to have access to an effective remedy;
 - Specifies that the review should be by a court or other independent body and cover both facts and law based on reliable, accurate and up-to-date information;
 - Specifies that asylum-seekers must be informed of the procedures for doing so, be allowed reasonable time to apply to have their cases formally reconsidered and not be prohibited from presenting new evidence at the appeals stage;
 - Specifies that pending the outcome of the final decision, asylum-seekers should be allowed to remain in the territory; and
 - Specifies that if suspensive effect is not automatic, this is only for manifestly unfounded or abusive applications as defined in Executive Committee Conclusion No. 30, *res judicata* cases and decisions allocating responsibility for determining an asylum claim on the basis of a bilateral or multilateral agreement and that, even in these cases, there is a possibility to apply for suspensive effect in the individual case.

An asylum-seeker should in principle have the right to remain on the territory of the asylum country and should not be removed, expelled or deported until a final decision has been made on the case or on the responsibility for assessing the case.

The nature of the appeal or review can vary quite widely depending on administrative law standards applicable in the country. Most jurisdictions also permit a further judicial review, which addresses questions of law only and may be limited by a leave requirement.

7.11 Asylum-seekers with specific needs in the asylum procedure

Asylum-seekers have been recognized by the European Court of Human Rights as a [particularly underprivileged and vulnerable population group in need of special protection](#). Amongst them are asylum-seekers who have additional vulnerabilities as a result of their age, gender or other characteristics, or their traumatic experiences in the country of origin or in the course of flight, or as a result of a combination of these factors.

Asylum-seekers who are likely to be particularly vulnerable include children, unaccompanied and separated children/adolescents, older persons, pregnant women or girls, single parents with minor children, victims (or potential victims) of trafficking, persons with diverse sexual orientation and/or gender identity, persons with physical and mental disabilities, stateless persons, members of ethnic and religious minorities, indigenous peoples, victims/survivors of torture, rape or other

Vulnerable asylum-seekers in the asylum procedure: What to do?

Asylum-seekers may not know that what they have experienced or could be exposed to if returned to their country of origin could constitute grounds for refugee status. They may continue to fear persons in authority or fear rejection and/or reprisals from their family and/or community.

This may be true of other asylum-seekers, but it can be particularly the case for those whose age, gender, social position, level of education, disability, or other circumstances place them at a disadvantage. This is also more likely to be the case where the asylum-seeker's experience does not fit traditional patterns of persecution and/or where he or she is traumatized. Asylum-seekers exposed to age- and gender-related forms of persecution, such as women, children or asylum-seekers with diverse sexual orientation and/or gender identity, may also feel shame and/or stigma about what has happened to them.

All these factors mean that:

- Asylum-seekers with specific needs should be given **information in a language they understand about the status determination process and procedures**, their right to access it, as well as legal advice, in a manner and language that they can understand and that is adapted to their situation including their age, gender, level of education, cultural and social background, and ability to understand.
- An **open and reassuring environment** where asylum-seekers can be assured of the **strict confidentiality** of their claim (including vis-à-vis other family members) is particularly important in the context of gender-related asylum claims, for

instance by female or asylum-seekers with diverse sexual orientation and/or gender identity.

- Asylum-seekers should be given the **opportunity to request to be interviewed by staff and interpreters of the sex they prefer** and the authorities should endeavour to accommodate such requests wherever possible, given available resources. This can assist full disclosure of sometimes sensitive and personal information in gender-related asylum claims and thereby promote fair and efficient decision-making. Gender- and culturally-sensitive interviewing techniques are similarly important.
- **Several interviews may be needed**, particularly for victims of sexual and gender-based violence or other forms of trauma and for children, in order to establish a relationship of trust and to obtain all necessary information. In this regard, interviewers should be responsive to the trauma and emotion of claimants and should stop an interview if the asylum-seeker is becoming distressed.
- With regard to any **incomplete or late disclosure**, including of relevant information in subsequent asylum applications, it should be understood that this may not reflect a lack of credibility. Rather, it may be the result of the asylum-seeker's inability or reluctance to recall and recount the full extent of persecution suffered or feared and/or may be due to a lack of understanding that his or her experience may constitute grounds for refugee status.
- Respect for the **human dignity** of all asylum-seekers should be a guiding principle at all times.

serious forms of psychological, physical or sexual abuse, and traumatized persons. Such persons may have specific needs during the asylum procedure and officials of the asylum authority need to be aware and take account of them in their handling of the claim.

Legislation and implementing regulations can usefully highlight these needs and set out measures that need to be in place to take account of them.

Specialized training is needed to enhance interviewers' and interpreters' awareness of and sensitivity towards asylum-seekers' vulnerabilities and specific needs and their awareness of legal and procedural issues that apply. This can help ensure the specific needs of particularly vulnerable asylum-seekers are taken into account and enable the sensitive and flexible handling of their claims. Training and expertise are also needed to ensure officials are aware of and responsive to cultural or religious sensitivities or personal factors such as age, gender, socio-economic status and level of education. Specialized training on the particular aspects of refugee claims based on diverse sexual orientation and/or gender identity for decision makers, interviewers, interpreters, advocates, and legal representatives is likewise crucial.

In order to assess claims made by such persons accurately, **country of origin information** also needs to be age and gender-sensitive, rather than reflecting primarily adult male experiences. It therefore needs to provide information on the situation in both law and practice and the experiences of women, children, persons with diverse sexual orientation and/or gender identity, and others. The absence of such information does not necessarily reflect an absence of persecution.

In addition to these more general issues, the sections below focus on the specific needs of the following groups of asylum-seekers:

- Children, including unaccompanied and separated children;
- Women;
- Asylum-seeking families;
- Survivors of torture and traumatized persons;
- Persons with diverse sexual orientation and/or gender identity; and
- Persons with disabilities.

When parliamentarians debate and approve legislation or regulations establishing asylum authorities and the framework within which they operate, they need to ensure that they take into account the specific needs of particularly vulnerable asylum-seekers and allocate sufficient resources to enable the authorities to fulfil their responsibilities.

Children, including unaccompanied and separated children

States are obliged under Article 22 of the Convention on the Rights of the Child (CRC) to take appropriate measures to ensure that a child, whether accompanied, unaccompanied, or separated, who is seeking refugee status receives appropriate protection.

This involves establishing an asylum system that is able to take account of the particular situation of child asylum-seekers both procedurally and substantively. In particular, it involves enacting legislation addressing the appropriate treatment of unaccompanied and separated children, building the capacities and providing the resources necessary to implement this in accordance with the CRC and other international human rights, refugee protection or humanitarian instruments.

Children in the asylum procedure: What to do?

Due to their young age, dependency and relative immaturity, children should enjoy specific procedural and evidentiary safeguards to ensure that fair refugee status determination decisions are reached on their claims.

Minimum standards for the treatment of children during the asylum procedure include:

- Claims made by child asylum-seekers, whether they are accompanied or not, should normally be **processed on a priority basis in the regular procedure** with reduced waiting periods at each stage of the asylum procedure and every effort made to render a decision promptly and fairly, as they will often have special protection and assistance needs.
- Before the start of the procedure, children require information about the procedure that is presented in a child-friendly manner, as well as **sufficient time to prepare** for and reflect on rendering the account of their experiences, to build trusting relationships with their guardian and other professional staff and to enable them to feel safe and secure.
- Children who are the principal applicants in an asylum procedure are entitled to a properly trained **legal representative** able to support the child throughout the procedure.
- Children have a right to **express their views** and to participate in a meaningful way is: their own account of their experience is often essential for the identification of their individual protection needs. In many cases, the child will be the only source of this information.
- This involves establishing **safe and child-appropriate procedures and environments** that generate trust at all stages of the asylum process and ensuring that child asylum-seekers are given all necessary information in a language and manner they understand about their options and the consequences arising from them.
- **Appropriate communication methods and interviewing techniques** are necessary at the different stages of the procedure and must take into account the age, gender, cultural background and level of maturity and development of the child, and the circumstances of flight and mode of arrival.
- **Interviewers should have the necessary training and skills** to interview and evaluate correctly the reliability and significance of the child's account.
- **Decisions should be communicated to children in a language and in a way they can understand.** Children need to be informed of the decision in person, in the presence of their guardian, legal representative, and/or other support person, in a supportive and non-threatening environment. If the decision is negative, particular care needs to be taken in delivering the message to the child and explaining what next steps may be taken in order to avoid or at least reduce psychological stress or harm.

The best interest of the child is paramount. A child should not be refused entry or returned at the point of entry, or be subjected to detailed interviews by immigration authorities at the point of entry.

As soon as an unaccompanied or separated child is identified, an independent, qualified representative or **guardian** should be appointed free of charge to assist him or her at all stages. Efforts need to be made as soon as possible to initiate tracing and family reunification with parents or other family members, except where this could put the parents or other family members in danger or this is not in the child's best interest.

If a child's age is in doubt, any **age assessment** needs to be conducted in a safe, child- and gender-sensitive manner with due respect for human dignity, as part of a holistic assessment that takes into account both the physical appearance and the psychological maturity of the child. In case of uncertainty, the individual should be considered as a child. Persons claiming to be children should be provisionally treated as such, until an age assessment has taken place.

“ Recommends that States, UNHCR and other[s] work in close collaboration to ... Develop child and gender-sensitive national asylum procedures, where feasible, ... with adapted procedures including relevant evidentiary requirements, prioritized processing of unaccompanied and separated child asylum-seekers, qualified free legal or other representation for unaccompanied and separated children, and consider an age and gender-sensitive application of the 1951 Convention through the recognition of child-specific manifestations and forms of persecution, including under-age recruitment, child trafficking and female genital mutilation. ”

[UNHCR Executive Committee, Conclusion No. 107 \(LVIII\) Children at risk, 2007](#)

- ▶ [General comment No. 6 \(2005\): Treatment of unaccompanied and separated children outside their country of origin](#), UN Committee on the Rights of the Child (CRC), 2005
- ▶ [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), UN Committee on the Rights of the Child (CRC), 2013
- ▶ [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](#), UNHCR, 2009, especially paragraphs 65-77
- ▶ [The heart of the matter – Assessing credibility when children apply for asylum in the European Union](#), UNHCR, 2014

Women

In order to ensure that male and female asylum-seekers have equal access to asylum procedures and that States can identify international protection needs accurately, States need to ensure that asylum procedures are gender-sensitive. As well as ensuring that gender-related forms of persecution are recognized as able to result in recognition of refugee status (see Chapter 6.4 The refugee definition: Who is included? Adopting an age, gender and diversity-sensitive approach to refugee status determination), asylum procedures need to be set up and implemented in a gender-sensitive manner so that female asylum-seekers can present their claim effectively.

Where women asylum-seekers are accompanied by male relatives, they should also be informed in private and in terms they understand that they may have a valid claim in their own right, and that they have a right to make an independent asylum application at any stage. They should be given the opportunity to seek legal advice before making such an application.

The asylum authority should also provide for female asylum-seekers to be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case. Gender- and culturally-sensitive interviewing skills are key to enabling disclosure, identifying persecution, and ensuring an accurate assessment of such claims.

“ The Executive Committee has urged States to “provide, wherever necessary, skilled female interviewers in procedures for the determination of refugee status and ensure appropriate access by women asylum-seekers to such procedures, even when accompanied by male family members.”

[UNHCR Executive Committee, Conclusion No. 64 \(XLI\), 1990](#)

▶ [Guidelines on international protection No. 1: 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, 2002, especially paragraphs 35-36

Asylum-seeking families

Where a family seeks asylum, more than one family member may have a valid independent claim for refugee status, whether this be the father, mother or a child, or other accompanying relatives or dependants. As a general rule, therefore, the applications of family members and other dependants should always be assessed on their own merits irrespective of whether or not the principal applicant is recognized as a refugee.

Where a principal applicant is granted refugee protection, other members of the nuclear family and dependants should, in principle, be granted the same status in the interest of preserving the family unity of the recognized refugee. The fact that a principal applicant is excluded from refugee protection does not affect the right of family members to have their claims independently assessed on their own merits.

Survivors of violence and torture and traumatized persons

In addition to the general points mentioned above, mechanisms for referral to psychosocial counselling and other support services should be made available to victims/survivors of violence, torture or other traumatic events. As a best practice, trained psychosocial counsellors should be available to assist such asylum-seekers throughout the process.

“ The Executive Committee ... Recommends that refugee victims of sexual violence and their families be provided with adequate medical and psychosocial care, including culturally appropriate counselling facilities, and generally be considered as persons of special concern to States and to UNHCR with respect to assistance and the search for durable solutions.”

[UNHCR Executive Committee, Conclusion No. 73 \(XLIV\) \(f\), 1993](#)

Persons with diverse sexual orientation and/or gender identity

With regard to asylum-seekers with diverse sexual orientation and/or gender identity, in addition to the issues mentioned above, interviewers and decision makers need to maintain an objective approach so that they do not reach conclusions based on stereotypical, inaccurate or inappropriate perceptions of individuals with diverse sexual orientation and/or gender identity.

The interviewer and the interpreter must avoid expressing, whether verbally or through body language, any judgement about the asylum-seeker's sexual orientation, gender identity, sexual behaviour or relationship pattern. They should use vocabulary that is non-offensive and shows a positive disposition towards diversity of sexual orientation and gender identity. Using inappropriate terminology can hinder asylum-seekers from presenting the actual nature of their fear.

Where someone seeks asylum in a country where same-sex relations are criminalized, these laws can impede his or her access to asylum procedures or deter the person from mentioning his or her sexual orientation or gender identity within status determination interviews. In such situations, it may be necessary for UNHCR to become directly involved in the case, including by conducting refugee status determination under its mandate.

- ▶ [Guidelines on international protection No. 9: Claims to refugee status based on sexual orientation and/or gender identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), UNHCR, 2012, especially paragraphs 58-61

Persons with disabilities

Respect for the dignity and individual autonomy of persons with disabilities and the principles of non-discrimination and participation set out in the [Convention on the Rights of Persons with Disabilities](#) should guide the authorities' handling of asylum claims of persons with disabilities.

This means asylum procedures need to ensure that persons with disabilities who are seeking asylum receive appropriate legal advice and support and facilitated physical access to premises as needed to enable them to make and present their claim effectively. Persons with mental disabilities or suffering from mental health problems may need to be accompanied by an appointed guardian or representative (in addition to a legal representative) and may require medical or psychosocial support. As with child asylum-seekers, their claims should, as a general rule, be examined on a priority basis by trained and expert decision-makers.

“ The Executive Committee ... recommends that States and UNHCR, as applicable, ensure that refugee status determination and all other relevant procedures are accessible and designed to enable persons with disabilities to fully and fairly represent their claims with the necessary support. ”

UNHCR Executive Committee, Conclusion No. 110 (LXI) Refugees with Disabilities (j), 2010

Checklist for parliamentarians:

Asylum-seekers with specific needs in the asylum procedure

- ✔ Parliamentarians are encouraged to promote the inclusion of explicit measures to address the specific needs of particularly vulnerable asylum-seekers including female asylum-seekers, survivors of violence and torture, traumatized persons, LGBTI asylum-seekers and others. Such measures include the requirements to provide asylum-seekers with information about the asylum process and procedures, their right to access it, as well as to legal advice, in a manner and language that they can understand and that is adapted to their situation including their age, level of education and any disability; to give female asylum-seekers the opportunity to be interviewed by skilled female interviewers and interpreters; and give family members and dependants of principal applicants the right to make an independent asylum claim and, where appropriate, be recognized as refugees in their own right.
- ✔ In line with Article 22 of the CRC, parliamentarians are encouraged to: ensure that legislation:
 - Addresses the situation of children including separated and unaccompanied children seeking asylum, provides child-sensitive procedural safeguards, and explicitly refers to the principle of the "best interest of the child";
 - Provides that as soon as an unaccompanied or separated child is identified, an independent, qualified guardian or adviser should be appointed free of charge to assist him or her;
 - Provides that, at all stages of the asylum process, unaccompanied and separated children have a suitably qualified legal representative to assist them to present their claim for asylum. Legal representatives should be available at no cost to the child; and
 - Stipulates (if the legislation provides for age assessment procedures) that these should be carried out only in cases where the child's age is in doubt, that they are part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the child, that they are carried out on a voluntary basis in a child- and gender-sensitive manner by independent professionals with appropriate expertise, and that, in case of doubt, the person should be considered to be a child.
- ✔ Promote the inclusion of a provision stipulating that if the principal applicant meets the criteria of the refugee definition, his or her nuclear family members and other dependants should normally be granted refugee status in accordance with the right to family unity of the recognized refugee, unless the grant of refugee status is incompatible with the personal legal status of the family member or dependant (e.g. a spouse who is a national of the country of asylum).
- ✔ Ensure that legislation does not prohibit the admission of separate and independent asylum claims by any other family member or dependant after a negative decision is reached in relation to the claim of the principal applicant, particularly in light of the need for awareness of gender-related persecution and child-specific forms of harm.
- ✔ Allocate sufficient resources to asylum authorities to ensure that specialized training, appropriate country of origin information and other services can be provided, so that decision-making can be undertaken in a way that takes account of the specific needs of particularly vulnerable asylum-seekers and is sensitive to age, gender and diversity.
- ✔ Call for the asylum authority to issue guidelines as needed, for instance, on procedural safeguards, interviewing techniques and assessment of claims by children, women, victims of torture, traumatized persons, LGBTI asylum-seekers and other vulnerable persons.

7.12 Recognition of refugee status

When an asylum-seeker is recognized as a refugee, he or she should be granted a secure legal residency status upon recognition. Refugees, like asylum-seekers, are entitled to be issued with identity papers. Recognized refugees are in addition entitled to receive travel documents.

Secure and durable legal residency status

Providing refugees at a minimum with lawful stay, if not permanent residence, is a legitimate and necessary measure to enable a State to implement its obligations under the 1951 Convention and to enable refugees to enjoy the rights to which they are entitled under the Convention. A secure residency status is also one of the most effective measures States can adopt to facilitate refugees' integration, their prospects of establishing a definitive and permanent home, and assuming their role as full and equal members of society.

Where States decide under legislation to provide for a time-limited status that is renewable, the legal residency status granted to refugees upon recognition should be compatible with the form of residency ultimately required for naturalization. This means that if recognized refugees are not granted permanent residence, they should at minimum be granted a status that will allow them to apply for permanent residence before applying for naturalization.

Parliamentarians should bear in mind that recognizing refugee status for a limited number of years and then reviewing that status not only puts refugees in a more precarious situation and slows their integration, but also requires considerable administrative and financial resources.

Identity documentation

States parties to the 1951 Convention are required to issue identity papers to any refugee in their territory (Article 27). Issuing identity documentation to refugees certifying their status enables them to access other services and rights and can help protect them from harassment and *refoulement*. Such documentation should be issued to all adult refugees and to separated and unaccompanied child refugees, because of the protection and access to rights it affords. (For information on asylum-seekers, who like refugees are entitled to receive identity documentation, see Chapter 5.2 Reception and treatment of asylum-seekers, Registration and identification of asylum-seekers and refugees.)

Travel documents

States parties are required to issue travel documents to refugees lawfully staying in the country for the purpose of travel outside their territory unless compelling reasons of national security or public order require otherwise (Article 28). The Schedule to the Convention provides further details about travel documents and there is a specimen Convention Travel Document in the Annex to the Convention.

Issuing what are known as Convention travel documents (CTDs) to refugees helps them exercise their fundamental right to leave any country, including their host country. It does not imply nationality has been granted to a refugee, but, since they are widely recognized by other countries, they enable them travel to other countries, including to study, find employment, health care or resettlement.

Modern international standards favour the issuance of machine-readable travel documents, as set out by the International Civil Aviation Organization (ICAO) in Annex 9 to the Convention on International Civil Aviation (Chicago Convention). Machine-readable travel documents facilitate international travel of refugees and are more secure and less easy to alter or forge. Electronically enabled or biometric travel documents provide even higher security standards.

The new ICAO standards became mandatory for all travel documents in 2016. UNHCR and ICAO have jointly issued [guidance for issuing machine-readable travel documents to refugees and stateless persons](#).

UNHCR and ICAO recommend that States incorporate the individual right of refugees lawfully staying in their territory to obtain a machine-readable travel document into their national asylum, refugee, immigration, and/or citizenship laws. Many States have already done so. While such an entitlement is ideally contained in a national parliamentary act, more detailed provisions standards and procedural issues could be addressed in administrative regulations. The joint UNHCR/ICAO document sets out the issues that need to be regulated.

States parties are also required to issue **documents or certificates** to refugees unable, because of their status, to obtain them from their national authorities (Article 25). Any fees charged must be moderate and commensurate with those charged to nationals for similar services. The timely registration of births, marriages and divorces and issuance of associated documentation can be particularly important for the rights of refugee women and children.

- ▶ Conclusions [No. 35 \(XXXV\) Identity documents for refugees](#), [No. 49 \(XXXVIII\) Travel documents for refugees](#) and [No. 114 \(LXVIII\)](#) UNHCR Executive Committee, 1984, 1987 and 2017
- ▶ [Guide for issuing machine readable Convention travel documents for refugees and stateless persons](#), UNHCR and International Civil Aviation Organization (ICAO), 2017

Checklist for parliamentarians:

Recognition of refugee status

Legislation should provide for recognized refugees to be granted lawful stay in the country and to be issued with identity documents (like asylum-seekers) and with travel documents. To this end, parliamentarians are encouraged to:

- ✔ Ensure with regard to **lawful residency status** that:
 - Provision is made for an asylum-seeker to be granted a secure legal residency status, preferably permanent residence, upon recognition as a refugee; and that if refugees are not granted permanent residence, they should at minimum be granted a status which will allow them to apply for permanent residence before applying for naturalization.
- ✔ Ensure with regard to **identity documentation** that:
 - Provision is made for the issuance of individual identity documents certifying their status to both asylum-seekers and refugees. For recognized refugees, this can also be done by issuing all refugees with a travel document according to Article 27 of the 1951 Convention;
 - Such identity documentation is also issued to family members recognized as refugees on the basis of derivative status (or in the case of asylum-seekers, to family members of the principal applicant);
 - The format used prevents misuse and enables the relevant authorities to be satisfied that the person using the document is in fact the person to whom it has been issued. As a good practice, documents issued to refugees should be similar in format and duration to those issued to permanent residents, as this often facilitates access to services and rights;
- ✔ Ensure with regard to **travel documents** that:
 - Provision is made for the issuance of travel documents to persons recognized as refugees (including on the basis of derivative status) in accordance with Article 28 of the 1951 Convention and the rules governing the issuance, duration and renewal of Convention Travel Documents (CTDs) contained in the Schedule to the 1951 Convention;
 - Any fees charged for issue of the document do not exceed the lowest scale of charges for national passports (see Schedule to the 1951 Convention, paragraph 3) – one way of keeping down administration procedures and the cost of producing such travel documents is to provide for documents to be issued with longer validity; and
 - National asylum, refugee, immigration and/or citizenship laws are adapted, if this has not yet been done, to ensure refugees lawfully staying in the country are issued with machine-readable travel documents, so as to comply with universally accepted standards and enable refugees to enjoy freedom of movement and travel abroad.

7.13 Cancellation, revocation and cessation of refugee status

Someone who has been recognized as a refugee (whether by a State under the 1951 Convention and/or by UNHCR as a mandate refugee) may lose refugee status only if certain conditions are met. Refugee status may only be withdrawn on the basis of a cancellation or revocation or if the conditions for cessation of refugee status are met.

Cancellation and revocation of refugee status

Cancellation of refugee status is warranted when it becomes known that the individual was recognized as a refugee even though he or she did not meet the eligibility criteria at the time. This may be because the inclusion criteria were not met or because an exclusion clause should have been applied. The decision to grant refugee status may have been made in error because the person had intentionally misrepresented or concealed material facts in order to obtain refugee status, in cases of misconduct such as bribery, or due to a mistake by the determining authority.

In most legal systems, whether civil or common law ones, general administrative law provides parameters for re-opening a decision that has become final. Depending on the reasons for the erroneous decision, this may be subject to time limits. General legal principles requiring consideration of the proportionality of the measures and respect for “acquired rights” are also often applicable. While not expressly provided for in the 1951 Convention, cancellation is consonant with international refugee law provided it is established, in procedures offering appropriate safeguards, that the person concerned did not meet the refugee criteria at the time of the initial decision.

In such cases, a person whose refugee status is cancelled because he or she did not meet the eligibility criteria at the time of the initial recognition, may have a well-founded fear of persecution linked to a 1951 Convention ground at the time of the cancellation proceedings. The person must therefore be given access to a procedure to determine whether he or she qualifies for refugee status at the present time, either within the cancellation procedure or in separate proceedings, depending on the legal system in place.

Revocation of refugee status is appropriate, where a recognized refugee engages in conduct coming within the scope of Article 1F(a) or 1F(c) of the 1951 Convention, provided of course that all the criteria for the application of one or both these exclusion clauses are met.

Cancellation, revocation: What is the difference?

Cancellation is the term used by UNHCR to refer to a decision to invalidate a refugee status recognition which should not have been granted in the first place. Cancellation affects determinations that have become final, that is, they are no longer subject to appeal or review. It has the effect of rendering refugee status null and void from the date of the initial determination (*ab initio* or *ex tunc* – from the start or from then).

Revocation involves withdrawal of refugee status in situations where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the 1951 Convention after having been recognized as a refugee. This has effect for the future (*ex nunc* – from now).

Cancellation and revocation: What procedural safeguards need to be in place?

Cancellation or revocation may only be decided on an individual basis. A refugee whose status may be cancelled or revoked should:

- Be informed of the nature of the proceedings and of the evidence on which the proposed cancellation or revocation is based;
- Be given an opportunity to rebut any allegations of fraud or other misconduct claimed by the authority;
- Be provided with the assistance of an interpreter, if required, and be allowed legal counsel; and
- Be provided with a right to appeal or review of such a decision by a different person or a differently constituted panel from that which made

the original decision – the appeal or review should be able to assess matters of law and fact and should have suspensive effect.

Refugee status remains in place until a decision to cancel or revoke it has become final.

Cancellation and revocation of refugee status should not be confused with expulsion under Article 32 of the 1951 Convention nor with loss of protection against *refoulement* pursuant to Article 33(2), as explained in Chapter 4.2 Admission to territory and the scope of the *non-refoulement obligation*, above. Neither of the latter provide for the loss of refugee status of a person who, at the time of the initial determination, met the eligibility criteria of the 1951 Convention.

Checklist for parliamentarians:

Cancellation and revocation of refugee status

- ✔ Where legislation permits the authorities to consider cancellation of refugee status, parliamentarians are encouraged to ensure that:
 - The substantive grounds for cancellation are consistent with international refugee law and that the procedure to be followed respects procedural safeguards as outlined above and considers and takes into account both proportionality considerations and the previously acquired rights of the refugee concerned, including any links the refugee has established in the country and
 - A person whose refugee status is cancelled is given access to a procedure for determining whether he or she qualifies for refugee status at the present time, either within the cancellation procedure or in separate proceedings, depending on the legal system in place.
- ✔ Where legislation contains provisions for the revocation of refugee status for persons who have committed certain acts after their recognition as refugees, ensure that such revocation of refugee status is only contemplated where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the 1951 Convention and does not include acts described under Article 1F(b) or Article 33(2) of the Convention and that any revocation does not affect the refugee status of family members.
- ✔ Ensure that the legislation requires that the affected individual be informed of the reason for cancellation or revocation of status and provided with an opportunity to challenge the decision, preferably before the authority responsible for the determination of refugee status, with the opportunity for an appeal with suspensive effect to a higher authority.

► [Note on the cancellation of refugee status](#), UNHCR, 2004

Cessation of refugee status

Recognition of a person's refugee status is not limited in time. It only ceases when the so-called "cessation clauses" (under Article 1C of the 1951 Convention and Article 1, paragraph 4 (a) to (e) of the 1969 OAU Refugee Convention) are met. These spell out the conditions under which a refugee ceases to be a refugee and are based on the consideration that international protection should not be maintained where it is no longer necessary or justified.

Refugee status should thus be retained unless the refugee comes within the terms of one of the cessation clauses. This results from the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes – not of a fundamental character – in the situation prevailing in their country of origin.

When a State wishes to apply the ceased circumstances clauses, the burden rests on the country of asylum to demonstrate that there has been a fundamental, stable and durable change in the country of origin and that invocation of Article 1C(5) or (6) is appropriate. There may be instances where certain groups should be excluded from the application of general cessation because they remain at risk of persecution.

“ States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist; ... an essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, inter alia, from relevant specialized bodies, including particularly UNHCR. ”

[UNHCR Executive Committee Conclusion No. 69 \(XLIII\) Cessation of status, \(a\), 1992](#)

Even when circumstances have generally changed to such an extent that refugee status would no longer be necessary, the specific circumstances of individual cases may warrant continued international protection. All refugees affected by general cessation

Refugee status: When does it cease?

Under Article 1C of the 1951 Convention, refugee status may cease either through the actions of the refugee (contained in sub-paragraphs 1 to 4) or through fundamental changes in the objective circumstances in the country of origin upon which refugee status was based (sub-paragraphs 5 and 6).

Of the six cessation clauses, the first four reflect a change in the situation of the refugee that has been brought about by him- or herself, namely:

1. Voluntary re-availment of national protection;
2. Voluntary re-acquisition of nationality;
3. Acquisition of a new nationality; and
4. Voluntary re-establishment in the country where persecution was feared.

The last two cessation clauses, Article 1C(5) and (6), are based on the consideration that international protection is no longer justified on account of changes in the country where persecution was feared, because the reasons for a person becoming a refugee have ceased to exist. They are known as the "ceased circumstances clauses".

Checklist for parliamentarians:

Cessation of refugee status

- ✔ Since the grounds for cessation enumerated in Article 1C of the 1951 Convention and Article 1, paragraph 4 (a) to (e) of the 1969 OAU Refugee Convention are exhaustive, to ensure respect for international legal standards in relation to cessation of refugee status, parliamentarians are encouraged to retain the exact wording of the cessation clauses of the 1951 Convention and, if applicable, the 1969 OAU Convention and ensure that additional grounds for cessation are not included in legislation.
 - ✔ If cessation of refugee status is foreseen on the basis of Article I(4)(g) of the OAU Convention, when a persons engages in subversive activities in the sense of Article III(2), parliamentarians are encouraged to provide that such provisions must be read within the framework of Article 1F of the 1951 Convention and the same standards with respect to these provisions apply.
- In line with international standards, parliamentarians are further encouraged to:
- ✔ Ensure that legislation provides for the non-application of the cessation clauses to refugees who are able to invoke compelling reasons arising out of previous persecution for refusing to return to their country of nationality or former habitual residence.
 - ✔ Ensure that the second paragraph of Article 1C(5) and 1C(6) referring to “compelling reasons” is also applied to Article 1A(2) refugees, as this is a general humanitarian principle that is now well-grounded in State practice.
 - ✔ Ensure that legislation requires that each affected individual be informed of the reason for cessation of status and provides an opportunity for him or her to challenge the decision, preferably before the authority responsible for the determination of refugee status, with the opportunity for an appeal with suspensive effect to a higher authority.
 - ✔ If domestic legislation provides for grounds for cessation of complementary forms of protection, ensure that these provisions essentially follow the parameters of Article 1C of the 1951 Convention, including as regards the “compelling reasons” exception of Article 1C(5) and (6) of the 1951 Convention, which are equally applied to the cessation of complementary protection.
 - ✔ Advocate that legislation contains provisions requiring authorities to consult with UNHCR when considering the application of cessation clauses.

must therefore have the possibility, upon request, to have such application in their case reconsidered on international protection grounds relevant to their individual case.

Both the ceased circumstances clauses allow a refugee to invoke “compelling reasons arising out of previous persecution” for refusing to re-avail him- or herself of the protection of the country of origin. This exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence.

In addition, UNCHR’s Executive Committee, in Conclusion No. 69, recommends that States consider “appropriate arrangements” for persons “who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links”.

- ▶ [Conclusion No. 69 \(XLIII\) Cessation of status](#), UNHCR Executive Committee, 1992
- ▶ [Guidelines on international protection No. 3: Cessation of refugee status under Article 1C\(5\) and \(6\) of the 1951 Convention relating to the Status of Refugees \(the “ceased circumstances” clauses\)](#), UNHCR, 2003

7.14 Persons found not to be in need of international protection

When an asylum-seeker has been found not to be in need of international protection in a fair procedure in a final decision and where there are no compelling humanitarian reasons to stay, such persons have two options: either return to the country of origin or seek alternative legal migration options, such as regularization. Since the latter is generally only available to individuals with a specific profile or circumstances, depending on national legislation, the focus of this section is on return.

Promoting voluntary return: What to do?

Where individuals who do not have a right to stay in a host country can return home voluntarily, the sustainability of their return is better guaranteed. Voluntariness helps ensure that the return takes place in a safe and dignified manner and is more cost-effective for the returning State.

Good practices to encourage and support voluntary and sustainable return include providing information and counselling on return options and circumstances in the country of origin; providing transportation, reintegration, and/or post-return assistance; and post-return monitoring.

In all cases, the return must respect the principle of *non-refoulement*. Appropriate safeguards need therefore to be in place to assess new or unexamined risks, in situations where, for instance, persons in the return procedure may not have had access to asylum procedures and, if they have, where new risks have developed in the country of origin. States have adopted two different approaches to ensure this: re-referral to the asylum procedure, or the establishment of a separate process for the examination of these risks as part

of the return procedure, such as a pre-removal risk assessment in **Canada** (see below). Concerns that some returnees might abuse such a process in order to prolong their stay are best addressed through efficient procedural and case management mechanisms.

For **persons with specific needs**, it is necessary to determine whether appropriately adapted assistance is available during return and reintegration. If such arrangements are not available, this may preclude the person’s return to his or her country of origin. Trafficked persons found not to be in need of international protection may, for instance, continue to require medical and psychological attention and specific reintegration support to ensure that they are not re-trafficked. Where stateless persons are allowed to return to their country of habitual residence, reintegration assistance may be required.

The **International Organization for Migration** (IOM) can be an important partner for governments with regard to assisted voluntary return and reintegration (AVRR) programmes.

Twenty guidelines on forced return

The Council of Europe's Committee of Ministers adopted [Twenty guidelines on forced return](#) in 2005 to guide national authorities responsible for the return of aliens or foreigners. In summary they call on authorities to:

- 1. Promote voluntary return** in preference to forced return.
- 2. Adopt a removal order** only in pursuance of a decision reached in accordance with the law that has considered all relevant information readily available and determined that the return will not violate the principle of *non-refoulement*; that the return is proportionate and in pursuance of a legitimate aim; that in the case of a child, a determination of the child's best interests has been made and the authorities of the host State are satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return; and that the State of return will readmit the returnee and if he or she is not readmitted to the State of return, the host State will take him or her back.
- 3.** Ensure there is **no collective expulsion**, by only issuing a removal order following a reasonable and objective examination of each individual's case that takes into account the circumstances specific to each case.
- 4.** Provide **notification of the removal order** in writing to the individual concerned, either directly or through his or her authorized legal representative, and provide an explanation of the order to the addressee in a language he or she understands. The order should indicate the legal and factual grounds on which the order is based, the remedies available, whether or not they have a suspensive effect, and the deadlines within which such remedies can be exercised.
- 5.** Afford an **effective remedy against the removal order** before a competent, impartial and independent authority or body with the power to review the removal order, including the possibility of temporarily suspending its execution, and ensure appropriate procedural guarantees.
- 6.** Only order **detention pending removal** to ensure that a removal order will be executed, if this is done in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host State have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures.
- 7. Release the returnee if the removal arrangements are halted** or not executed with due diligence.
- 8.** Ensure **any detention pending removal is for as short a period as possible** and review the need to detain at reasonable intervals of time.
- 9.** Ensure an accessible **judicial remedy against detention** in which legal aid is available and a court determines speedily the lawfulness of the individual's detention and, if detention is found not to be lawful on appeal, ensures immediate release.
- 10.** Ensure **conditions of detention pending removal** are in facilities specifically designated for that purpose, offering appropriate material conditions, staffed by suitably qualified personnel, and with access to lawyers, doctors, NGOs, members of their families, and UNHCR.

11. **Only detain children as a measure of last resort and for the shortest appropriate period of time.**
12. **Cooperate between States on readmission** to facilitate the return of foreigners who are found to be staying illegally in the host State, while ensuring that the exchange of information between the host State authorities and the authorities of the State of return will not put the returnee, or his or her relatives, in danger upon return, in particular by not sharing information relating to the asylum application. (For more on applicable standards and principles regarding confidentiality in this context see Chapter 7.4 Ensuring confidentiality in line with relevant data protection principles and standards, above.)
13. Ensure **States' obligations** are upheld, including that of the State of origin to respect its obligation under international law to readmit its own nationals without formalities, delays or obstacles.
14. Do not arbitrarily deprive the person concerned of his or her nationality, in particular where this would lead to a situation of **statelessness**.
15. Seek the **cooperation of returnees** at all stages of the removal process to comply with their obligation to leave the country, in order to limit the use of force, in particular by providing information in advance about the removal arrangements and the information given to the authorities of the State of return, giving the individual an opportunity to prepare his or her return by making necessary contacts in the host State and the State of return, and if necessary, to retrieve personal belongings which will facilitate his or her return in dignity.
16. Ensure **fitness for travel and** perform a **medical examination** prior to removal on all returnees where they have a known medical condition, where medical treatment is required, or where the use of restraint techniques is foreseen. Persons should not be removed as long as they are medically unfit to travel.
17. Respect the **dignity** of the returnee, at the same time as ensuring the **safety** of other passengers, of crew members, and of the returnee him- or herself. The removal of a returnee may have to be interrupted where its continuation would endanger this.
18. Ensure any **escort staff** used are carefully selected and receive adequate training, including in the proper use of restraint techniques.
19. Only use **means of restraint** that are strictly proportionate to the actual or reasonably anticipated resistance of the returnee with a view to controlling him or her. Do not use restraint techniques and coercive measures likely to obstruct the airways partially or wholly, or force the returnee into positions where he/ she risks asphyxia.
20. Implement an effective **system for monitoring forced returns** and document the forced return operation fully, in particular with respect to any significant incidents or any means of restraint used in the course of the operation. Ensure an effective and independent investigation within a reasonable time, if the returnee lodges a complaint against any alleged ill-treatment that took place during the operation.

Providing effective and efficient outcomes for persons who are not refugees or not otherwise entitled to international protection is key to the integrity of national asylum systems. It is also important for public confidence in the asylum system, for the control of irregular migration, and prevention of smuggling and trafficking of such persons.

Where States conclude **readmission agreements**, they should be phrased and implemented in a manner compatible with States' obligations under international refugee law and international human rights law. This involves, for instance, ensuring that such agreements explicitly affirm that their implementation is subject to respect of the principle of *non-refoulement* and that they do not apply to asylum-seekers. They should also provide that every person whose return is proposed should be individually assessed as to the legality and appropriateness of readmission, having regard to the principle of family unity, the specific needs of individuals, and the need to ensure that the best interests of the child are a primary consideration. Readmission agreements should also contain procedural safeguards, including clear instructions to border guards and access to interpreters at borders.

“ The return of persons whose asylum claims have been rejected after a full and fair hearing, and of irregular migrants, must be conducted in a safe and humane manner, with due respect for the principles of *non-refoulement* and prohibition of torture and cruel, inhuman or degrading treatment or punishment, while also upholding the best interests of the child and the right to respect for private and family life.”

[Declaration from the General debate on the imperative for Fairer, Smarter and More Humane Migration, IPU, 133rd General Assembly, Geneva, 2015](#)

“ The Executive Committee ... *Reiterates* that return of persons found not to be in need of international protection should be undertaken in a humane manner, in full respect for human rights and dignity and that force, should it be necessary, be proportional and undertaken in a manner consistent with human rights law; and *emphasizes* that in all actions concerning children, the best interests of the child shall be a primary consideration.”

[UNHCR Executive Committee, *Conclusion No. 96 \(LIV\) on the return of persons found not to be in need of international protection*, \(c\), 2003](#)

State practice

Pre-removal risk assessment before return In [Canada](#), the authorities make a pre-removal risk assessment (PRRA) before certain categories of persons are removed from the country in order to ensure that the country upholds its *non-refoulement* obligations. Anyone subject to a removal order, including unsuccessful asylum-seekers who fear persecution upon return, may apply for a PRRA. The risks assessed during the PRRA include risk of persecution, risk of torture, risk to life or risk of being subjected to cruel and unusual treatment or punishment.

Checklist for parliamentarians:

Return of persons found not to be in need of international protection

To ensure continued respect for international law and human rights standards for non-refugees, parliamentarians are encouraged to:

- ✔ Support the preference of voluntary over forced return of persons found not to be in need of international protection in a fair procedure in a final decision and where there are no compelling humanitarian reasons to stay, including by ensuring the provision of information and counselling on return options and circumstances in the country of origin to such persons; allocating funding to provide transportation assistance, reintegration assistance, and post-return assistance and monitoring.
- ✔ In order to ensure returns respect the principle of *non-refoulement*, support the inclusion in legislation of appropriate safeguards for assessing new or unexamined risks, whether this involves re-referral to the asylum procedure or the establishment of a separate process for the examination of these risks as part of the return procedure.
- ✔ In order to ensure the specific needs of persons facing return are properly taken into account, ensure legislation provides for the evaluation of such needs and that if appropriately adapted assistance is not available the return should not go ahead.
- ✔ Promote the inclusion in readmission agreements of provisions requiring their implementation in line with international refugee law and international human rights law, including notably an explicit statement that their implementation is subject to respect for the principle of *non-refoulement* and that they do not apply to asylum-seekers. They should also provide that every person in respect of whom return is proposed should be individually assessed as to the legality and appropriateness of readmission, having regard to the principle of family unity, the specific needs of the individual concerned, and the need to ensure that the best interest of the child is a primary consideration. Such agreements should also contain procedural safeguards, including clear instructions to border guards and the provision of access to interpreters at borders.
- ✔ Where voluntary return of persons found not to be in need of international protection in a fair procedure in a final decision is not possible and forced return is envisaged, ensure that the safeguards outlined above are in place and respected.
- ✔ Encourage monitoring of the readmission of those returned to ensure that this is carried out in a humane, dignified and orderly manner.

▶ [Conclusion No. 96 \(LIV\) on the return of persons found not to be in need of international protection](#), UNHCR Executive Committee, 2003

▶ [Twenty guidelines on forced return](#), Council of Europe Committee of Ministers, 2005

Chapter 8

Respecting the rights and dignity of refugees



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8.1 Introduction

Refugees are not only entitled to protection from *refoulement*. They have a range of other rights under the 1951 Convention and international human rights law more generally.

But a discussion of refugee rights cannot be isolated from the contexts in which refugees live. Some refugees are formally granted asylum, or are resettled, and have extensive access to rights, often on a par with citizens in their host countries. Other refugees spend years or even decades in refugee camps or informal settlements, in both rural and urban areas, with limited rights, no formal recognition of their status, and little prospect of a durable solution to their plight.

There is no doubt that the presence of refugees can place considerable pressure on host communities, especially communities that face economic and social stresses of their own. Frequently this pressure results in political decisions to curtail refugees' access to rights, which in turn can fuel racist and xenophobic attitudes towards refugees, and even physical attacks on them. The solution lies not in marginalizing refugees, but in enabling them to be productive members of the society where they are living.

This chapter reviews measures and policies to encourage respect for the rights of refugees and beneficiaries of complementary protection with particular attention to the following:

- The principle of non-discrimination that should guide all initiatives
- The rights of refugees and the obligation of all refugees to respect the laws of the host country
- The rights of persons with complementary forms of protection
- Tackling racism and xenophobia
- Leveraging UN human rights mechanisms to protect refugees.

8.2 The principle of non-discrimination

Non-discrimination is a core principle of international law and the foundation of all human rights treaties. Discrimination is prohibited, whether on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 of the 1951 Convention obliges States parties to apply its provisions without discrimination as to race, religion or country of origin. Article II of the OAU Refugee Convention uses the same wording, and further specifies that there should be no discrimination on the ground of membership of a particular social group.

Parliamentarians should do their utmost to ensure that legislative provisions concerning refugees are drafted and applied without discrimination of any kind.

8.3 The obligations and rights of refugees

Refugees have obligations towards their host country, as set out in Article 2 of the 1951 Convention. In Articles 3 to 34, the Convention enumerates the rights of refugees. Some of these rights apply as soon as a refugee or asylum-seeker is present in a State or otherwise comes under its jurisdiction. Others apply when an asylum application has been made, or once refugee status has been granted, or after a certain period of residence. General human rights law of course applies to refugees.

What obligations do refugees have under the 1951 Convention?

Every refugee has duties to the country where he or she has taken refuge. Refugees must comply with existing laws and regulations and with measures taken by the authorities to maintain public order (Article 2).

... and what rights do they have?

In addition to the protections afforded by Articles 31 – 33 of the 1951 Convention (against punishment for unlawful entry, expulsion and *refoulement*) discussed in previous chapters, the Convention provides for refugees to acquire other rights, depending on their level of attachment to the country of asylum. The underlying concept is that the longer the refugee stays in the country of asylum, the more rights he or she acquires.

Rights of all asylum-seekers and refugees, regardless of status or length of stay

- Religious practice and religious education (Article 4, no reservations permitted, treatment as nationals);
- Acquisition of movable and immovable property (Article 13, treatment as favourable as possible and, in any event, not less favourable than foreigners generally);
- Access to courts and to legal assistance (Article 16, no reservations permitted, treatment as nationals);
- Elementary education (Article 22(1), treatment as nationals);
- Secondary and tertiary education (Article 22(2), treatment as favourable as possible and, in any event, not less favourable than foreigners generally); and
- Identity papers (Article 27).

Rights of asylum-seekers and refugees lawfully in the country (from the moment of application for refugee status)

- Self-employment (Article 18, treatment as favourable as possible and, in any event, not less favourable than foreigners generally); and
- Choice of residence and freedom of movement within the territory (Article 26, subject to any regulations applicable to foreigners generally)

Rights of refugees lawfully staying in the country

- Right of association (Article 15, most favourable treatment accorded foreign nationals);
- Wage-earning employment (Article 17, most favourable treatment accorded foreign nationals);
- Liberal professions (Article 19, treatment as favourable as possible and, in any event, not less favourable than foreigners generally);
- Housing (Article 21, treatment as favourable as possible and, in any event, not less favourable than foreigners generally);
- Public relief and social security (Articles 23, 24, treatment as nationals); and
- Travel documents (Article 28).

Rights of refugees habitually resident

- Artistic rights and patent rights (Article 14, treatment as nationals).

Checklist for parliamentarians: The obligations of refugees

- ✓ Parliamentarians are encouraged to support the inclusion in legislation of a provision requiring every refugee to conform to the laws and regulations of the host country, as set out in Article 2 of the 1951 Convention.

Checklist recommendations regarding the rights of refugees are given under the subheadings below.

Subsequent sections provide more detail on the following rights of refugees:

- Freedom of movement;
- Family life, including family unity;
- The right to work;
- The right to education;
- Access to courts;
- The right to social welfare and health care; and
- Other rights.

The focus of this chapter is on the rights of refugees. Asylum-seekers – persons who have applied for recognition as refugees but who have not yet received a final decision on their claim – are entitled to the rights set out below that are accorded to refugees lawfully present on the territory. More information on the rights of asylum-seekers in the context of reception is provided in Chapter 5.2 Reception and the treatment of asylum-seekers).

The right to freedom of movement

Article 26 of the 1951 Convention requires States parties to give refugees lawfully in their territory the right to choose their place of residence and to move freely within that territory on the same basis as foreigners generally. This means States parties may not impose restrictions that apply only to refugees, but must rather respect the principle of non-discrimination. (For information on restrictions to freedom of movement amounting to detention, see Chapter 5.3.)

International human rights law also guarantees the rights of choice of residence and freedom of movement for persons lawfully in the territory (Article 12 of the International Covenant on Civil and Political Rights). This includes refugees. Any

Refugees in urban areas: Now the majority

When people think of refugees, they often picture people living in camps in remote, rural areas, dependent on humanitarian aid. Indeed, host governments frequently insist on the establishment of refugee camps for reasons of public order or security, or to avoid competition between refugees and nationals. But the proportion of refugees in urban areas has increased steadily in recent years, and on average six out of ten refugees now live in urban areas, mainly in developing and middle-income countries.

It should not come as a surprise that refugees prefer the relative personal freedom that comes with living outside of camps. Even though refugee camps can take many different forms, their defining characteristic is some degree of limitation on the rights and freedoms of refugees and on their ability to make meaningful choices about their lives. Refugees may seek to leave camps because their physical and material security are at risk there, or in order to reunite with family members, to seek medical treatment, or because secondary and tertiary education opportunities are non-existent, or simply because they do not have access to livelihoods.

Enabling refugees to live freely and lawfully in host communities, whether urban or rural, promotes self-reliance and personal responsibility. It discourages dependency, encourages resilience, and helps to prepare refugees for solutions. This philosophy underpins UNHCR's 2014 [Policy on alternatives to camps](#).

Checklist for parliamentarians:

The right to freedom of movement

To ensure respect for the rights of refugees under international law and standards, parliamentarians are encouraged to:

- ✔ Favour an approach that permits refugees to choose their place of residence and to move freely within the territory.
- ✔ When considering the establishment of refugee camps or designated areas or settlements, take into account whether such an approach facilitates refugees' enjoyment of their rights, including their security.
- ✔ If refugees are assigned to **camps or settlements**,
 - Ensure that these are located at a reasonable distance from the border, that law and order is maintained, that any flow of arms into refugee camps and settlements is curtailed, that their use for the internment of prisoners of war is prevented, that armed elements are disarmed and that combatants are identified, separated and interned (see also Chapter 5.5 – Responding in emergencies, The civilian and humanitarian character of asylum);
 - Advocate for measures to ensure refugees' physical and material security, to enable refugee families to reunite, to enable refugees to obtain medical care, to secondary and tertiary education and training opportunities, and to strengthen access to livelihoods; and
- ✔ Support refugees' freedom of movement, in particular to enable them to access rights and services, and work to end encampment policies where freedom of movement is restricted.
- ✔ Where refugees are living in **outside of camps**
 - Allocate resources to ensure effective and accurate registration and documentation of refugees;
 - Support initiatives to bring together ministries responsible for key services, such as health, education and social welfare, and authorities at the national, municipal and neighbourhood level to enhance awareness of refugees' needs and rights, coordinate initiatives, and to strengthen safety and security for all in urban communities hosting refugees, and to ensure that support is provided both to host communities and refugees; and
 - Support initiatives and partnerships of these authorities with civil society organizations that have expertise related to livelihoods, such as chambers of commerce, street vendors' associations, and neighbourhood groups, to enhance livelihood and self-reliance opportunities for refugees and host communities.

restrictions must have a lawful basis in legislation and be necessary to protect a legitimate interest, such as public security, public order, and public health.

Despite these human rights standards, many countries restrict refugees' freedom of movement. Yet policies that confine refugees to camps or otherwise restrict their residence have a negative impact on many aspects of refugees' lives, including their access to work, to education and to health care. (The right of refugees to travel documents is discussed in Chapter 7.12 Recognition of refugee status, Travel documents.)

State practice

Freedom of movement: Uganda's [2006 Refugee Act](#) and related Regulations signalled a shift from viewing refugees as recipients of aid to seeing them as economic actors in charge of their own destiny. The law entitles recognized refugees to relative freedom of movement, the right to work and to establish their own businesses and access to Ugandan social services. Refugees are provided with land for use (not ownership) in designated settlements. This can be used to build a semi-permanent house and for cultivation or pasturing. This pioneering approach enhances social cohesion and integration and allows refugees and host communities to live together peacefully.

- ▶ [UNHCR Policy on refugee protection and solutions in urban areas](#), UNHCR, 2009
- ▶ [UNHCR policy on alternatives to camps](#), UNHCR, 2014
- ▶ [Good practices for urban refugees](#), Database for professionals working with urban refugees

The right to family life, including family unity

Many refugees are separated from their family members as a result of persecution or in the chaos of conflict and flight. Separation increases the risks all family members face, especially women and children, who may as a result be exposed to violence and exploitation, be unable to secure the protection and assistance they need, and yet have to take responsibility for their households and younger siblings. Separation can have devastating consequences for the wellbeing of all

Family unity: How to respect this right?

UNHCR's Executive Committee has underscored the need to safeguard the unity of refugee families, including by:

- Putting in place procedures to prevent family separation and ensuring that reception arrangements allow families present on the territory to be together;
- Considering requests for family reunification in a positive and humanitarian spirit, without undue delay, and based on liberal criteria for deciding which family members of a refugee can be admitted;
- Recognizing all family members as refugees when the principal applicant is recognized as such and allowing each family member to submit separately any asylum claim he or she may have;
- Establishing family unity as a priority in the early stages of all refugee operations, including by providing all possible assistance for tracing relatives;
- Giving priority to identifying unaccompanied and separated children, tracing their families, and facilitating their reunification with family members in accordance with the child's best interests;
- Promoting the self-sufficiency of adult family members to enhance their capacity to support their dependants and in so doing promote the smoother and more rapid integration of refugee families; and
- Assisting spouses and family members of different nationalities to remain together as families during and following voluntary repatriation.

The family: Who is included?

Close family members (often called nuclear family) are generally considered to include:

- Spouses – not only legally-recognized spouses (including same-sex spouses), but also individuals who are engaged to be married, or who live in a customary (or “common-law”) marriage, including same-sex partners;
- Minor or dependent unmarried children and minor siblings – this includes stepchildren and adopted children, whether adopted legally or on a customary basis.
- In the case of a refugee under 18 years, close family members would include his or her parents or primary legal or customary caregivers, any other dependants of the adult parent or caregiver, as well as his or her minor siblings.

The element of **dependency** should be given appropriate weight in decisions on family reunification.

- Dependency implies a relationship that can be social, emotional, and/or economic. The bond between the individuals in question will normally be strong, continuous and of reasonable duration.
- Whether such individuals lived in the same household is a relevant factor to consider in determining whether a relationship of dependency exists, but it is not determinative.

return to the country of origin or habitual residence.

There is no single, universally agreed definition of what constitutes a family. It is important to adopt a culturally sensitive approach that goes beyond the traditional “nuclear” family. In many societies, “family” includes extended family members who are in close relationships of dependency.

“ It is hoped that countries of asylum will apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family. ”

[UNHCR Executive Committee, Conclusion No. 24 \(XXXII\), Family reunification, 1981](#)

refugee family members and their ability to rebuild their lives.

International human rights law recognizes the family as the fundamental group unit of society, entitled to protection by society and the State. The Conference of Plenipotentiaries that adopted the 1951 Convention reaffirmed the “essential right” of family unity for refugees.

“ The Conference, *Considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened.* ”

[Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons](#)

The Convention on the Rights of the Child, which nearly all States have ratified, stipulates that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner” (Article 10). This obligation applies regardless of whether a country is a party to the 1951 Convention.

Family reunification in a country of asylum may be the only way to protect a refugee’s right to family unity, since he or she cannot

Checklist for parliamentarians:

The right to family unity

Legislators can work to protect the unity of refugee families by:

- ✔ Ensuring that the right to family unity, including of refugees admitted temporarily to the territory, is recognized in legislation;
- ✔ Advocating for an interpretation of what constitutes a family to include not only legally married spouses and their minor children, but also other customary and common law couples forming a genuine and stable family unit, and other persons with whom there is a relationship of social, economic or emotional dependency;
- ✔ Ensuring that refugee status is not affected by a change in family status or by the marriage, divorce or legal separation of a family member, the death of the head of family, or attainment of the age of majority, unless one of the cessation clauses applies (for more on the latter, see Chapter 7.13 – Cancellation, revocation and cessation of refugee status);
- ✔ Ensuring that legislation allows recognized refugees to be joined in the country of asylum by their family members, who should be given the same residence rights as those accorded to the principal applicant. Legislation should provide for an effective remedy against decisions denying applications for family reunification;
- ✔ Ensuring that neither legislation nor practice require refugees to return to their country of origin to initiate family reunification procedures;
- ✔ Enabling separated refugee families to be reunited quickly, including by not requiring refugees to reside for a certain period of time in the host country before being entitled to bring their families, and by advocating for family reunion applications to be dealt with in a positive and expeditious manner (Article 10 of the CRC);
- ✔ Exempting refugees from requirements to demonstrate their ability to provide support for family members, such as evidence of adequate accommodation, sickness insurance and economic resources;
- ✔ Adopting flexible means of proof of family relationship, allowing alternative means of proof where documentary evidence is not available and discouraging systematic use of DNA testing to prove relationships;
- ✔ Where DNA testing is used to confirm blood relationships, following the guidance provided in [UNHCR's Note on DNA testing to establish family relationships in the refugee context](#); and
- ✔ Providing for the tracing of family members, particularly of unaccompanied and separated children, when it is in the child's best interests.

- ▶ [UNHCR Note on DNA testing to establish family relationships in the refugee context](#), UNHCR, 2008
- ▶ Conclusions [No. 24 on family reunification](#), [No. 85 on international protection](#), and [No. 88 on the protection of the refugee's family](#), UNHCR Executive Committee, 1981, 1998 and 1999
- ▶ [New York Declaration for Refugees and Migrants](#), paragraphs 57 and 79, and Annex 1 (Comprehensive refugee response framework), paragraphs 5(a) and 14(c)

Access to work: What does it bring?

Access to work is central to refugees' ability to live normal lives and to contribute to their host community. It is an important precursor to durable solutions. Ensuring that refugees have access to work, are able to develop their skills and to use them productively:

- Is essential to the realization of other human rights and to the preservation of human dignity. It is a fundamental step in the re-establishment of a normal life and a sense of agency, and helps to prevent negative coping strategies such as survival sex;
- Enables individuals and families to have an income, is central to the attainment of an adequate standard of living, and reduces costs to the State of social security and support;
- Enables refugees to be more resilient and better able to overcome future challenges than if they are compelled to rely upon humanitarian aid;
- Enables refugees to contribute to the development of their communities, through their own industry and labour and by paying taxes;
- Can help societies become more cohesive through the resulting interaction between refugees and host communities; and
- Enables refugees to be better prepared for any of the durable solutions.

work permits, language requirements or failure to recognize their qualifications, they often have no choice but to work in the informal sector. In that context they risk exploitation, discrimination and abuse, often being paid less than nationals or expected to work longer hours, or in more dangerous conditions.

“ It makes sound economic and social sense to allow asylum seekers to work and to provide refugees with access to the labour market. The cost to the State will clearly be less if asylum seekers and refugees are employed rather than dependent on State support. Employment also contributes to a more cohesive society by encouraging and improving contacts between refugees, asylum seekers and the local community.”

The right to work

The 1951 Convention explicitly acknowledges the importance of socio-economic rights for refugees. It contains four provisions on access to work and rights at work: the right to wage-earning employment (Article 17), the right to self-employment (Article 18), the right to practise a liberal profession (Article 19), and the right to benefit from labour regulations (Article 24).

Recognized refugees should be allowed to enter the labour market and engage in wage-earning employment, be self-employed or in any other way practise a liberal profession. (With regard to asylum-seekers, see Chapter 5.2 – Reception and treatment of asylum-seekers, Access to work for asylum-seekers.)

International human rights law also recognizes the “right of everyone to the opportunity to gain his [or her] living by work which he [or she] freely chooses or accepts” ([International Covenant on Economic, Social, and Cultural Rights](#), Article 6). Allowing refugees to contribute to their communities through employment and enterprise enables them to acquire, enhance and retain skills that they may also use in the event of return or resettlement.

Where refugees are not allowed to work or face practical barriers such as costly

Refugee story:

The man who changes lives

One man can change lives. Just ask the Syrian refugees in a town near Izmir, Turkey, about the work of Levent Topçu. Known to them simply by his first name, Levent is the general manager of a Turkish company that makes leather goods and employs 60 people.

He is part of a group of Facebook friends who created an association to help people in need, including some of the 2.7 million Syrian refugees in Turkey. Levent and his friends, with some help from UNHCR, have transformed the existence of more than 100 people.

His group renovated an abandoned building, so that several families could live in it. Then Levent went to the miserable shelters and tents put up by refugees near the fields where they worked. "Levent found us," said Abeer, a 32-year-old Syrian with 10 children, who fled her village near Aleppo a year ago. "You can't describe what we felt. Finally we found someone to care for us."

Levent and his association, the Unity Solidarity group, moved quickly when a new Turkish law

came into effect in 2016 giving refugees the right to obtain work permits. Until then, Syrians who had fled the war, and hundreds of thousands of other refugees, had no legal right to work.

After obtaining advice and help from UNHCR, Levent set about putting the law into effect. He found two Syrians, compiled the paperwork and, in six weeks, cleared the bureaucratic hurdles. Both men are now working at the factory, the first in the region to hire refugees. They earn the same as their Turkish counterparts. Soon six Syrian refugees will be working at the company.

"It's good work, and I thank God for it," said Mohammed, one of the first two. "My goal is to go back home with my family. I never thought of Europe. So we stayed here and now I can work."

Levent says his motivation is simple. "These people are my brothers and sisters. We only have one life and we have an obligation to help. ... The Koran says the way to help people in need is give them something you love."

["The man who changes lives"](#), UNHCR, 2016

State practice

Right to work in national legislation Many countries specify in legislation that refugees have the right to work. Ecuador's 2008 Constitution provides for equality of rights for nationals and non-nationals, including access to the labour market, work rights and full access to social security; since 2012, refugees have not been required to obtain work permits. National legislation in other countries in [Latin America](#) recognizes refugees' right to undertake paid employment. In **Uganda**, the 2010 [Refugees Regulations](#) permit recognized refugees to engage in gainful or wage-earning employment on a par with the most favourable treatment accorded to foreign residents. In the **European Union**, the 2011 recast Qualification Directive requires Member States to authorize beneficiaries of international protection to engage in employed or self-employed activities as soon as protection has been granted.

Checklist for parliamentarians:

The right to work

In line with international standards on the right to work, parliamentarians are encouraged to:

- ✔ Support legislation assuring recognized refugees are treated on the same basis as nationals as regards wage-earning employment, self-employment and the exercise of liberal professions. Failing that, promote equal treatment at least for wage-earning employment and self-employment as per Articles 17 and 18 of the 1951 Convention.
- ✔ Support measures to ensure recognition of foreign academic, professional and vocational credentials, as well as fee waivers and other assistance for tests that enable professional recognition where credentials are not accepted.
- ✔ In order to assess fairly and expeditiously whether refugees fulfil relevant requirements for employment, encourage the use of flexible measures, such as provisional recognition of qualifications on the basis of a sworn statement or special examinations to check the qualifications refugees claim to have acquired.
- ✔ Support refugee access to vocational and language training, to facilitate access to employment.

State practice

Facilitated access to the labour market
Among numerous projects in various countries, the public employment service (*Arbetsförmedlingen*) in **Sweden** provides integration programmes for refugees tailored to their individual situation, experience and needs. This consists of language classes, employment preparation (for example, job experience and the validation of educational and professional experience), and civic orientation studies to provide basic knowledge of Swedish society. The service also identifies employers willing to hire refugees and negotiates with employers to invest in skills development.

- ▶ [The Michigan guidelines on the right to work](#), University of Michigan Law School, 2010
- ▶ [Livelihoods and self-reliance](#), UNHCR, 2016

The right to education

Non-discriminatory access to education is a fundamental human right and is essential for the realization of other rights. Education helps protect refugee children from illiteracy, abuse, exploitation, child labour, early marriage, and recruitment by armed groups.

More than half the world's refugees are children. Yet only one in two attends primary school and only one in four goes to secondary school. There are also challenges in ensuring gender parity, in ensuring safe school environments, and delivering education in emergencies. Without more support for their education, refugees cannot develop the skills need to rebuild their lives and their countries.

UNHCR's Executive Committee has encouraged States to ensure primary education of a satisfactory quality for all refugee children, and to enable refugees also to have access to secondary, vocational and tertiary education, literacy classes, skills and vocational training. It has also recognized the link between education and durable solutions.

Refugee story:

A teenage refugee champions girls' education

Muzon's family fled the war in Syria in early 2013. Education has always played a big part in Muzon's life. Both her parents were teachers, as were her aunt and uncle. "I didn't need them to tell me that education is important. I always just felt it," she explains. "Our house was built by an engineer. When I was sick I went to a doctor. Education is everything in life."

Now 17, her deeply held conviction of the importance of education has become a defining feature of Muzon's life in exile. Not only has she continued her studies in Jordan, but she has also become a forceful and increasingly high-profile advocate for education among Syrian refugees, particularly young women and girls.

Upon reaching Za'atari refugee camp in Jordan, Muzon's biggest fear – that there would be no schools in the camp – was quickly dispelled. She enrolled in summer classes to get to grips with the new Jordanian curriculum before passing her grade-nine exams.

As she continued her schooling, she noticed that many of her fellow pupils stopped attending classes, often girls around her own age. She heard about one girl who had dropped out and was trying to sell her schoolbooks. Muzon sought

her out and convinced her to change her mind. A campaigner was born.

"After that I began advocating for education any time and any place. To my friends, their parents, neighbours or even just girls I met in the street," she says. She has also fought against the widely held belief within the camps that early marriage is the best way to secure the future of young female refugees.

"When I hear of people not letting their daughters go to school or marrying them off early, it makes me angry," she says. "Education is the armour that will protect you in life. If you get married before finishing your education, you won't be able to solve your own problems or educate your own children."

Muzon has achieved much despite her age and difficult circumstances. "Of course I have tried to turn this experience into a positive one," she says. "Being a refugee doesn't have to ruin your life. Many successful people have gone through hard times."

Education has given Muzon's life in exile a newfound purpose, and her simple message to the world is that the same can and should be true for every young refugee.

["A teenage refugee champions girls' education"](#), UNHCR, 2015

“ The Executive Committee ... recommends that States, UNHCR and other relevant agencies and partners undertake the following ... measures: ... Encourage the inclusion of all children in education programmes and strengthen children's capacities, including by enabling their equal access to quality education for girls and boys in all stages of the displacement cycle and in situations of statelessness; promote learning and school environments that are safe, do not perpetuate violence, and promote a culture of peace and dialogue; designate child-friendly spaces in camp and urban environments; and promote access to post-primary education wherever possible and appropriate, life-skills and vocational trainings for adolescents and support recreational activities, sports, play and cultural activities.”

UNHCR Executive Committee, Conclusion No. 107 (LVIII) Children at Risk (h) (viii), 2007

Checklist for parliamentarians:

The right to education

Reflecting international standards on education, parliamentarians are encouraged to:

- ✔ Ensure primary education is free and compulsory for all children, as required by Article 28 of the CRC. This includes refugee children whether staying lawfully in the country or not.
- ✔ Support initiatives to ensure safe school environments and enhance the enrolment and retention of refugee girls and boys.
- ✔ As regards access to secondary and tertiary education, advocate for refugees to be treated in the same way as nationals, particularly with regard to fees. At a minimum, as provided for under Article 22 of the 1951 Convention, refugees should be treated in the same way as other legally residing foreigners.
- ✔ In order to assess fairly and expeditiously whether refugees meet the requirements for higher education, support flexible measures, such as provisional recognition of educational credentials on the basis of a sworn statement or special examinations.

“ We note with serious concern that, today, a large proportion of the world’s out-of-school population lives in conflict-affected areas, and that crises, violence and attacks on education institutions, natural disasters and pandemics continue to disrupt education and development globally. We commit to developing more inclusive, responsive and resilient education systems to meet the needs of children, youth and adults in these contexts, including internally displaced persons and refugees. We highlight the need for education to be delivered in safe, supportive and secure learning environments free from violence. We recommend a sufficient crisis response, from emergency response through to recovery and rebuilding; better coordinated national, regional and global responses; and capacity development for comprehensive risk reduction and mitigation to ensure that education is maintained during situations of conflict, emergency, post-conflict and early recovery. ”

UNESCO, “Incheon Declaration,” Education 2030: Towards inclusive and equitable quality education and lifelong learning for all, World Education Forum 2015, Incheon, Republic of Korea, 2015

- ▶ On the importance of access to education for refugee children: [New York Declaration for Refugees and Migrations](#), paragraphs 81 and 83 and Annex 1 (Comprehensive refugee response framework), paragraphs 6(b), 13(b) and 14(a)

Access to courts

Article 16 of the 1951 Convention stipulates that refugees are entitled to have access to the courts and to treatment on a par with nationals as regards legal assistance. In practice, refugees often face hurdles as a result of poverty, marginalization and discrimination. Ensuring that they have effective access to justice is essential for refugee protection systems based on the rule of law (See also [New York Declaration for Refugees and Migrants](#), paragraph 39).

Checklist for parliamentarians:

Access to courts

To ensure respect for international standards on procedural fairness and access to justice, parliamentarians are encouraged to:

- ✔ Make sure that legislation guarantees refugees have access to courts (Article 16, 1951 Convention); provides them with necessary support such as interpretation and translation facilities, payment or waiver of costs and fees; and provides for free legal support for refugees, where this is available to nationals.
- ✔ Support initiatives to raise awareness among refugee populations of the remedies available if their rights are violated, including in cases of sexual and gender-based violence (SGBV) and other violations of women's and children's rights.
- ✔ Support initiatives to strengthen the non-discriminatory operation of law enforcement and formal and informal or customary justice mechanisms.

The right to social welfare and health care

Article 25 of the [Universal Declaration of Human Rights](#) affirms that everyone has the right to a **standard of living adequate for health and well-being**, including to food, clothing, housing and medical and necessary social services. This is related to numerous other rights, access to which should also be granted on a non-discriminatory basis and that are underlying determinants of health, such as access to safe, potable water and adequate sanitation and access to health-related education and information, including on sexual and reproductive health. (See also Chapter 5.2 – Reception and treatment of asylum-seekers, Access to health care for asylum-seekers.)

Refugees have a right to social assistance and social security. Article 24 (labour legislation and social security) of the 1951 Convention read together with Article 23 (public relief) provide a framework for refugees who are lawfully staying in the country to benefit from social insurance (contributory schemes) and social assistance (non-contributory schemes). These provisions take clear account of situations where refugees are not able to earn a living.

Many States rely on contributory systems as the main source of social security benefits. However, there are situations where refugees are more likely to work in the informal economy, or to hold insecure, low-paying jobs, or to be unemployed. Under such conditions they may not be able to contribute to social insurance schemes and to enjoy unemployment and sickness benefits or pensions. This problem may disproportionately affect women whose responsibilities to care for children mean they have not worked outside the home, or whose work histories have been interrupted, or who earn lower wages than men.

It is thus important for refugees also to have access to the host country's social welfare system. Article 23 of the 1951 Convention seeks to ensure that refugees may benefit from the social assistance that is enjoyed by nationals (See also [New York Declaration for Refugees and Migrants](#), paragraph 39 and Annex 1 (Comprehensive refugee response framework), paragraph 7(b)).

Checklist for parliamentarians:

Right to social welfare and healthcare

Parliamentarians are encouraged to take the following measures to ensure respect for social rights:

✔ Lobby for legislation that grants refugees lawfully staying in the country the same treatment as nationals with regard to **social security**, such as sick leave, maternity, disability, unemployment, and pension schemes

(Article 24 (1), 1951 Convention), if this is not already the case.

✔ Lobby for legislation that gives refugees lawfully staying in the country the same access to **public relief and assistance**, including medical insurance, as nationals (Article 23, 1951 Convention), if this is not already the case.

Other rights

With regard to **political rights**, refugees are generally not permitted to vote in elections or to stand for office in their country of asylum, until and unless they acquire citizenship there. They should nevertheless be granted the most favourable treatment accorded to foreign nationals as regards membership of and activities in non-political and non-profit-making associations and trade unions (Article 15, 1951 Convention). International human rights law also accords everyone the right to freedom of association with others (Article 22, [International Covenant on Civil and Political Rights](#) (ICCPR)).

With regard to refugee participation in elections in their country of origin, Article 25 of the ICCPR states that every citizen has the right to vote and be elected in free elections “without unreasonable restrictions”. Regional human rights instruments in Africa and the Americas contain similar provisions. Refugee participation in elections can make an important contribution to peace- and confidence-building measures and to creating conditions for sustainable voluntary return. Where refugees seek to participate in elections in their country of nationality, both the country of origin and country of asylum need to be involved to ensure that any such participation is based on the refugees’ free and informed consent with respect for confidentiality and without coercion; that any obstacles to registration and participation are removed; and that refugees who participate are not considered to have re-availed themselves of national protection and do not risk losing their refugee status as a result.

Articles 13 and 21 of the 1951 Convention grant refugees treatment as favourable as possible and, in any event, not less favourable than that accorded to foreigners generally as regards **the acquisition of movable and immovable property** and **access to housing and**. Refugees nevertheless frequently face problems realizing their right to adequate housing, often as a result of discrimination. (For more on restoration of housing, land and property in the context of voluntary repatriation see Chapter 9.3 – Voluntary repatriation.)

Checklist for parliamentarians:

Other rights

- ✔ While legislation may restrict the **political rights of refugees**, parliamentarians are encouraged to ensure that treatment is on the most favourable basis accorded to foreign nationals as regards the right to join non-political and non-profit associations and trade unions (Article 15, 1951 Convention). They are furthermore encouraged to:
 - ✔ If refugees wish to **participate in elections** in their country of origin, support measures to ensure that any such participation is based on their free and informed consent with respect for confidentiality and without coercion; that obstacles to registration and participation are removed; and that such participation is not viewed as re-availment of national protection and does not result in loss of refugee status.
- ✔ Support legislation that permits refugees to own **movable and immovable property** on the same basis as foreigners (Article 13, 1951 Convention), if possible promoting a more favourable standard that equates them to nationals.
- ✔ When the scope of **national child protection legislation** is defined, promote the access of all refugee children to national child protection systems.

With regard to **children**, the Convention on the Rights of the Child requires States “to ensure asylum-seeking and refugee children receive appropriate protection and humanitarian assistance” and to accord unaccompanied and separated refugee children “the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason” (Article 22). UNHCR’s Executive Committee has likewise called on States to establish and implement **child protection systems** to which all children under their jurisdiction, including asylum-seeking and refugee children, should have non-discriminatory access ([Conclusion No. 107](#), para. (b)(iii)).

8.4 The rights of persons with complementary forms of protection

Complementary forms of protection sometimes provides for fewer rights than are accorded to refugees; in certain cases this protection is limited to protection from *refoulement*.

Yet there is little reason to expect that the need for complementary forms of protection will be of shorter duration than the need for protection under the 1951 Convention, or that the humanitarian situation of the two groups will differ markedly. For these reasons, UNHCR recommends that States align the rights and benefits of persons given complementary protection with those of refugees.

Rights of persons with complementary protection: What should these be?

- Holders of complementary forms of protection and their family members should be provided with **identity documents**. Otherwise, they may face difficulties accessing the rights and benefits to which they are entitled.
- Persons with complementary protection and their family members should be issued with travel documents, if they are unable to obtain a national passport. The burden of proving the impossibility of obtaining a national passport should not be set too high.
- Like everyone else, beneficiaries of complementary protection have a right to **family life** and, like refugees, they are unable to enjoy this right in their country of origin or habitual residence. There is thus no justification for treating them differently from 1951 Convention refugees as regards the entitlement to family reunification.
- Persons with complementary protection should be allowed to work under the same conditions as refugees and to benefit under the same conditions from vocational training and other employment-related educational opportunities. Giving them access to the labour market reduces the burden on public and social assistance, can facilitate the integration of beneficiaries of complementary protection into their host societies and enables them to contribute to the local economy.

Checklist for parliamentarians: Rights and benefits of persons with complementary forms of protection

- ✔ Parliamentarians are encouraged to support legislation providing for the alignment of the rights and benefits of persons with complementary forms of protection with those of refugees, including as regards: the issuance of travel documentation to such persons and their family members if they are unable to obtain a national passport; access to the labour market, integration support and social benefits; and family reunification rights.

“ The Executive Committee ... Encourages States, in granting complementary forms of protection to those persons in need of it, to provide for the highest degree of stability and certainty by ensuring the human rights and fundamental freedoms of such persons without discrimination, taking into account the relevant international instruments and giving due regard to the best interest of the child and family unity principles. ”

[UNHCR Executive Committee, Conclusion No. 103 \(LVI\) Provision of International Protection including through Complementary Forms of Protection, 2005](#)

Regional practice

Rights of beneficiaries of complementary forms of protection
In the European Union the [recast Qualification Directive](#) generally provides for the same rights for refugees and beneficiaries of subsidiary protection, including as regards family reunification, employment, education, procedures for recognition of qualifications, healthcare, accommodation, and freedom of movement.
Unaccompanied child beneficiaries of subsidiary protection have the same benefits as their refugee counterparts. The differences are that residence permits granted to beneficiaries of subsidiary protection are to be issued for at least one year, renewable for periods of two years (as opposed to at least a three-year renewable period for refugees); beneficiaries of subsidiary protection are to be issued with travel documentation (but not refugee travel documents); and access to social welfare may be restricted to core benefits at the same level and under the same eligibility as nationals.

8.5 Combatting racism, discrimination and xenophobia

In addition to being among the causes of flight, racist, discriminatory and xenophobic attitudes and populist politics can affect the quality of asylum. Racism and xenophobia can hinder refugees' integration into their host society and can also make return less viable, if it takes place to countries where peace is fragile and racial or ethnic tensions remain high.

Often it is fear of the unknown – of the “other” – that underlies racism and discrimination. Other factors may include sudden increases in migratory flows, economic downturn, rising unemployment, and urbanization. The problem is exacerbated when refugees are mischaracterized as criminals, illegal migrants, “queue jumpers” or even as terrorists. This can polarize attitudes toward refugees and increase the risks of racism and intolerance.

How a problem is characterized can be very significant for how it is managed. **If the refugee question is seen as a humanitarian issue and a question of fundamental human rights, this helps create protection space.** If it is seen essentially as an immigration issue, this often works to deny protection to those in need. Efforts need to be made to sustain openness while doing the very best that can be done to allay any fears and apprehensions of host populations. Talking about the issue as one of human rights can help build on universal values that apply to everyone and help foster greater understanding and tolerance.

Racism, discrimination and refugees

Racism and discrimination can affect refugees at every stage of the displacement cycle.

- Ethnic, racial and religious tensions often **cause refugee flows.** Discrimination against ethnic or religious groups can be the result, or an integral part, of a political strategy. When ethnic identity is made into the defining characteristic of a country, minority groups may be seen as obstacles to social cohesion or nation-building. If a State is unwilling to perform its mediating role or is party to ethnic conflict, “ethnic cleansing” or other forms of persecution may result. Indeed, the deliberate expulsion of a specific group may be the object of the conflict.
- Refugees may be seen as an unwelcome disruption in the lives of people among whom they have sought safety. Their arrival can have a major impact on the country of asylum, especially when large numbers are involved. Some host communities may see refugees as competition for limited resources, a threat to their way of life or culture, or even to the national security and stability. Discrimination may follow, whether in acts of overt violence or in more subtle ways.
- Even when refugees opt for **repatriation**, discrimination can thwart hopes of returning to a normal life. Repatriation often takes place in less than ideal circumstances, sometimes in conditions of continued conflict and insecurity. The return of large numbers of refugees can strain local resources and hinder reconstruction as well as peace-building efforts, especially where large-scale returns shift the balance of power from one ethnic group to another. This can, in turn, result in discrimination against returning refugees, who may be seen as the “cause” of unwanted economic, military or political outcomes.

Refugee story:

Tackling prejudice against refugees

“I Want to Help Refugees” is the name of a group created through Facebook by a couple running a toy shop in the Latvian capital Riga. The volunteer group is standing up for refugee rights in a nation that is struggling to adjust to Europe’s migration crisis, although in Latvia there is no refugee crisis as such – rather a political crisis related to refugees.

So the group seeks to bring the situation to a human level. It organizes events, such as a feast of food and entertainment in a cultural centre for people from Iraq, Syria, Afghanistan and elsewhere to enable people to meet and understand that the situation concerns people, not abstract refugees. “There is a lot of fear, for many reasons”, one volunteer said. “People are afraid of the unknown. This is something very new for all of us.”

Locals have shown great generosity bringing donations, including food and clothes. At the

reception centre, asylum-seekers are grateful for the group’s work, noting that the parties are a high point for the children.

“We didn’t take risks just to get a better life, or come here to take some money, this is not true,” said a student from Syria. “We had a good life in Syria, but this war changed everything. We ran away from our country not for money, we just want to live in peace. That is all.”

The group’s founder hopes that the refugee issue will help bring Latvians together by showing how unity is more important than division. “If we were united as a nation, all ethnic groups, [we] would be much stronger, more confident, and more willing to help others”, he said.

The group is now a registered NGO. It continues to expand its support to asylum-seekers and refugees and is using Latvian media to raise awareness about the situation of refugees.

[“Latvian Volunteers Tackle Prejudice against Refugees”](#), UNHCR, 2016

Refugees often fear for their lives and those of their families. They have frequently suffered immensely before they even reach a country where they can claim asylum. They are also highly motivated and add to the pool of entrepreneurs, innovators and risk-takers, often making important contributions to their country of asylum.

Crucially, refugees are fellow human beings. To receive them well is not only in each society’s interests, it is fundamental to the idea of what it means to be human. A **shared sense of humanity can help unite people living in diverse societies.**

Racism and xenophobia: What to do?

Protecting refugees from racism, discrimination, xenophobia and intolerance requires political will and leadership. When local populations feel threatened, their fears can be easily fed by irresponsible media or manipulated for political ends. Divisive discourse can have a devastating impact on the lives of refugees who find themselves targeted as a result, and such discourse is ultimately harmful to host societies.

Parliamentarians have a responsibility to de-dramatize and de-politicize the essentially humanitarian challenge of protecting refugees, and to promote better public understanding of refugees and their right to seek and enjoy asylum from persecution.

No one group, people or religion is superior to another. All States have the responsibility to provide protection against discrimination and to foster education promoting understanding, tolerance and friendship among nations, racial and religious groups (Article 26(2), UDHR). Fulfilling this responsibility helps create respectful, diverse and tolerant societies, where people can feel they are secure, have a voice, and are able to contribute.

Measures are needed at all levels to prevent racism and discrimination, including against refugees:

- States should encourage all sectors of society to take concerted action to address racial division and conflict, including racism directed against those perceived as “foreigners” or “aliens”;
- National and local governments should devote resources and effort towards eliminating the root causes of racism and xenophobia and promoting inter-cultural activities, with participation by NGOs, religious organizations and others;
- Institutions at all levels of the community – the family, the school, the workplace, places of worship – should engage in efforts to foster tolerance; and
- States, NGOs, UN agencies and the media should make every effort to raise awareness about racism and discrimination, and to promote respect and tolerance, in order to foster positive social change.

Racism and xenophobia: The key role of parliamentarians

As **opinion** leaders, parliamentarians have the opportunity to:

- Take the lead in promoting respect and tolerance towards refugees;
- Use correct terminology that distinguishes between refugees and migrants and does not stereotype or mischaracterize refugees;
- Present refugee issues as a humanitarian concern, where the country of asylum can show pride and respect for human rights by opening its doors to people fleeing from conflict and persecution; and
- Ensure that the national debate on non-citizens, whether refugees, migrants or others, is based on rational, informed arguments, not on emotion.

“ We strongly condemn acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. Diversity enriches every society and contributes to social cohesion. Demonizing refugees or migrants offends profoundly against the values of dignity and equality for every human being, to which we have committed ourselves.”

Preserving the dignity of refugees: How?

Parliamentarians can contribute in a variety of ways to upholding the dignity of refugees, including the following:

Advocate for respect

- Make clear that refugees are entitled to enjoy the rights set out in the 1951 Convention, without discrimination. Refugees are also protected by international and regional human rights law and, as applicable, international humanitarian law.
- Ensure that national legislation provides for these protections, including in the context of refugee status determination procedures, reception and access to social and economic rights.
- Support an inclusive interpretation of the refugee definition that encompasses persons fleeing armed violence and conflict, as also provided for in the 1969 OAU Convention and the Cartagena Declaration. At a minimum, advocate for all people who need international protection but who are found not to fall within the 1951 Convention definition to be given a complementary form of protection with a clear legal status and as full a range of rights as possible.
- Advocate for measures to be put in place to ensure that refugees are aware of their rights.
- Support public-awareness campaigns and education about refugees in schools and communities and promote awareness of the positive contributions of refugees to the economy and society.

Protect refugees against racist and xenophobic acts and attitudes

- Refugees, like other targets of racist and xenophobic acts, should have legal protection against such acts, and the perpetrators of such crimes should be openly condemned and effectively punished.
- While the judiciary has responsibility for handling matters of criminal justice, parliamentarians can put into place a legal framework to ensure that

racially motivated attacks and other hate crimes are criminalized and that a culture of impunity is not allowed to develop.

- It is important to allocate resources to train officials at borders, such as border guards, immigration officers and police to sensitize them to racism, racial discrimination, xenophobia and related intolerance and ensure they carry out their duties in a non-discriminatory manner.
- It is likewise important to allocate resources for the training of others, such as law enforcement officials, interpreters, lawyers, service providers, and adjudicators, who interact with refugees and asylum-seekers, to sensitize them to racism, racial discrimination, xenophobia and related intolerance and make them aware of their responsibilities.

Speak out for and listen to refugees

- As legislators and the voice of the people in government, parliamentarians have a special interest in ensuring that human rights and the rule of law are upheld and that refugees can benefit from international protection and solutions to their plight.
- Parliamentarians should take the lead in ensuring that laws and procedures are in place so that their country can respond properly to the arrival of refugees, provide protection to those in need, and eventually facilitate their voluntary return, local integration or resettlement to another asylum country.
- To better understand the concerns of refugees, Parliamentarians talk with and listen to refugees in their constituencies, visit reception centres or refugee settlements, and schools attended by refugee children. They can meet newly resettled refugees and attend citizenship ceremonies for new citizens who arrived as refugees.

Demonstrate leadership

- Parliamentarians have tremendous opportunities to demonstrate leadership on refugee and asylum issues by promoting public awareness of refugees as people who have been threatened, not as a threat.
- Parliamentarians can promote greater public knowledge of international refugee law and can help their government and their constituents understand their country's interest in a generous, stable and consistent system of international protection.
- Parliamentarians can support balanced debate by differentiating clearly between migration concerns and refugee protection issues, by denouncing racism and xenophobia and by avoiding stereotyping. They should encourage the objective and balanced portrayal of people, events and history. They can recall that many countries produced refugees themselves at some stage in their history.

Promote regional and international initiatives

- Finally, parliamentarians can reach out to their counterparts in other countries to promote regional and international initiatives to respect refugees and protect their rights.

“ The Executive Committee ... appeals to States to combat intolerance, racism and xenophobia and to foster empathy and understanding through public statements, appropriate legislation and social policies, especially with regard to the special situation of refugees and asylum-seekers.”

[UNHCR Executive Committee, Conclusion No. 77 \(XLVI\) \(h\), 1995](#)

“ The Review Conference for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance urges States “to take measures to combat the persistence of xenophobic attitudes towards and negative stereotyping of non-citizens, including by politicians, law enforcement and immigration officials and in the media, that have led to xenophobic violence, killings and the targeting of migrants, refugees and asylum-seekers.”

[Review Conference for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, outcome document, Geneva, 2009](#)

Checklist for parliamentarians:

Tackling racism and xenophobia

In addition to the more general actions supporting the dignity of refugees outlined above, in order to tackle racism, racial discrimination, xenophobia and related intolerance, parliamentarians can:

- ✔ Ensure the adoption and implementation of legislation aimed at combating racism, racial discrimination, xenophobia and related intolerance, including against refugees. Such legislation should criminalize racist and xenophobic acts, as well as incitement to all forms of hatred, including hate speech.
- ✔ Consult [General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination](#) and consider which of the measures it recommends States take to prevent discrimination based on citizenship or immigration status are particularly relevant to the national context, and lobby for the adoption of these measures.
- ✔ Support the adoption and implementation of policies aimed at promoting the positive aspects of a diverse society, as well as interaction between refugees, the local population, and civil society.
- ✔ Promote the development of a national action plan to combat racism, racial discrimination, xenophobia and related intolerance, monitor its implementation in consultation with relevant stakeholders and establish national programmes that facilitate the access of all, without discrimination, to basic social services.
- ✔ Ensure that perpetrators of racist and xenophobic violence are effectively and openly condemned through courts of law, human rights commissions and ombudsmen's offices and in parliamentary discourse.

State practice

Initiatives to tackle xenophobia In

South Africa there was an upsurge in xenophobic incidents in 2015, including attacks on refugees that resulted deaths and serious injuries, as well as renewed displacement. In an effort to address the issue, the South African Police Service (SAPS), South African Local Government Association (SALGA), UNHCR, NGOs, faith-based organizations and universities set up partnerships to support community dialogue and social cohesion. The Department of Home Affairs, Department of International Relations and Protection, and UNHCR collaborated to raise awareness of refugee rights and promote social discourse among refugees, migrants and local communities. UNHCR also has a strong partnership with SAPS, including through a “xenophobia hotline,” to support a prompt and decisive police response to prevent the outbreak or escalation of violent attacks on refugees in the country.

- ▶ [General recommendation No. 30 Discrimination against non-citizens](#), UN Committee on the Elimination of Racial Discrimination (CERD), 2002

8.6 Using UN human rights mechanisms for asylum-seekers and refugees

International human rights law underpins the international refugee protection regime and provides an important point of reference when devising State refugee protection systems. Indeed, UNHCR's Executive Committee has recognized "the close link between safeguarding human rights and preventing refugee problems" and the value of human rights standards in informing policies from reception through to solutions.

The UN human rights mechanisms that have been put in place to protect the human rights of everyone are important tools for enhancing the protection of refugees. This chapter considers how these mechanisms can be used to enhance respect for refugee rights. In particular, it looks at the following processes and procedures:

- Universal periodic review;
- UN special procedures; and
- UN human rights treaty monitoring bodies.

Engagement with the UN human rights treaty monitoring bodies

There are ten [human rights treaty bodies](#), each created in accordance with the provisions of human rights treaty that it monitors. These are committees of independent experts. Nine of these treaty bodies monitor implementation of the core international human rights treaties; the tenth, the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture, monitors places of detention in States parties to the Optional Protocol. The treaty bodies have an important role in supporting efforts to strengthen the protection of human rights, including those of asylum-seekers and refugees, at the national level. States report to the treaty bodies on the implementation of their obligations and duties under the core international human rights treaties, that in turn provide States with practical advice and assistance on how best to implement the treaties, including recommendations relevant to international protection. A number have issued General Comments or Recommendations on matters concerning asylum-seekers and refugees.

UN treaty-based bodies: What are these?

There are ten human rights treaty bodies that monitor implementation of the [core international human rights treaties](#):

- [Human Rights Committee](#) (CCPR);
- [Committee on Economic, Social and Cultural Rights](#) (CESCR);
- [Committee on the Elimination of Racial Discrimination](#) (CERD);
- [Committee on the Elimination of Discrimination against Women](#) (CEDAW);
- [Committee against Torture](#) (CAT);
- [Subcommittee on Prevention of Torture](#) (SPT);
- [Committee on the Rights of the Child](#) (CRC);
- [Committee on Migrant Workers](#) (CMW);
- [Committee on the Rights of Persons with Disabilities](#) (CRPD); and
- [Committee on Enforced Disappearances](#) (CED).

Under certain circumstances, the treaty bodies also consider complaints from individuals concerning violations of their rights. Anyone can lodge a complaint with a Committee against a State, provided the State is party to the treaty concerned and has accepted the Committee's competence to examine individual complaints. Third parties can lodge complaints on behalf of individuals if they have given their written consent, although this is not required if, for example, someone is in prison without access to the outside world or is a victim of an enforced disappearance.

Asylum-seekers or refugees can use the individual complaints procedures. **These procedures are particularly relevant for asylum-seekers or refugees in countries that are not party to the 1951 Convention or 1967 Protocol.** They have been used by asylum-seekers and refugees whose rights under the ICCPR, CAT, CEDAW, ICERD or CRPD were being violated – for instance, to prevent *refoulement* (pursuant to Article 3 CAT or Article 7 ICCPR); in the case of rejection of an asylum claim based on fear of being trafficked for sexual exploitation (Article 6 CEDAW); or discrimination in regard to acquisition of nationality because of on ethnic origin (Article 5 ICERD).

“ The Executive Committee ... [n]otes the complementary nature of international refugee and human rights law as well as the possible role of the United Nations human rights mechanisms in this area and therefore encourages States, as appropriate, to address the situation of the forcibly displaced in their reports to the United Nations Treaty Monitoring Bodies, and suggests that these bodies may, in turn, wish to reflect, within their mandates, on the human rights dimensions of forced displacement.”

[UNHCR Executive Committee, General Conclusion No. 95 \(LIV\) on International Protection, 2003](#)

- ▶ [The United Nations human rights treaty system, Fact sheet No. 30/Rev.1](#), OHCHR, 2012
- ▶ The Refworld page on human rights is at: <http://www.refworld.org/humanrights.html>.

Engagement with the UN special procedures

“[Special procedures](#)” is the general name given to mechanisms under the aegis of the Human Rights Council to look into specific country situations or thematic issues. Special procedures can be an individual – a Special Rapporteur or Independent Expert – or a Working Group. Mandate-holders report to the Council on their findings and recommendations; many also report to the General Assembly. As of August 2017, there were 56 special procedures (44 thematic mandates and 12 mandates relating to countries or territories), many with particular relevance to refugee issues.

Special procedures mandate holders regularly undertake **country visits**, during which they may, depending on their mandate, visit border areas, refugee camps, reception centres, detention centres or places where asylum-seekers are held in administrative custody. During such visits, they consult with ministries, parliamentarians, the judiciary, immigration officials, border guards, NHRIs, UN organizations, including UNHCR, civil society, and other actors to inform themselves about issues relevant to their mandate, which may affect asylum-seekers and refugees.

Special Rapporteurs with thematic mandates relevant to refugees

- Of the **Special Rapporteurs** with thematic mandates, those especially relevant to the protection of asylum-seekers and refugees include: the Special Rapporteurs on [adequate housing](#) as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; on the rights of [persons with disabilities](#); on the right to [education](#); on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable [environment](#); on [extreme poverty and human rights](#); on the right to [food](#); on the promotion and protection of the right to [freedom of opinion and expression](#); on [freedom of religion or belief](#); on the right of everyone to the enjoyment of the highest attainable standard of physical and mental [health](#); on the situation of [human rights defenders](#); on the rights of [indigenous peoples](#); on the human rights of [internally displaced persons](#); on the human rights of [migrants](#); on [minority issues](#); on contemporary forms of [racism](#), racial discrimination, xenophobia and related intolerance; on the sale of [children](#), child prostitution and child pornography; on contemporary forms of [slavery](#), including its causes and its consequences; on the promotion and protection of human rights while countering [terrorism](#); on [torture](#) and other cruel, inhuman or degrading treatment or punishment; on [trafficking in persons](#), especially women and children; on the human right to safe drinking [water](#) and sanitation; and on violence against [women](#), its causes and consequences.
- Of the **Working Groups**, those particularly relevant to asylum-seekers and refugees include those on people of [African descent](#), on

[arbitrary detention](#); on [enforced or involuntary disappearances](#); on the issue of discrimination against [women in law and in practice](#); and on the issue of human rights and transnational corporations and other [business enterprises](#) (the latter because of the link to root causes of displacement).

- There are also a number of **Independent Experts**. Those particularly relevant to asylum-seekers and refugees include those on the enjoyment of human rights by [persons with albinism](#), the enjoyment of all human rights by [older persons](#), human rights and international [solidarity](#), and on protection against violence and discrimination based on [sexual orientation and gender identity](#).

UN special procedures available to or in favour of refugees

Under several of the special procedures, urgent appeals can be made on a strict humanitarian basis. The Special Rapporteurs or Working Groups can intervene with a government to help prevent asylum-seekers or refugees from being subjected to imminent **human rights abuses** or in response to allegations of the existence of such abuses.

When it concerns an imminent **violation of the principle of non-refoulement**, resorting to the UN [Special Rapporteurs on Torture](#) and on [Summary Executions](#) or the [UN Working Group on Enforced Disappearances](#) may, in certain instances, be particularly relevant.

In addition, special procedures mandate holders may issue **thematic studies** that may be relevant to the protection of refugees, such as on challenges to refugee protection posed by counter-terrorism measures or the draft guiding principles on extreme poverty and human rights. Mandate holders can also act on **individual cases and concerns** of a broader, structural nature by sending communications to States in which they bring alleged violations to their attention.

The UPR: The key role of parliaments

Parliaments have an important role to play in the UPR process. The Inter-Parliamentary Union has worked with the Office of the High Commissioner for Human Rights (OHCHR) at international and regional level to support their more active engagement. National parliaments:

- Should be involved in national consultations preceding the preparation and approval of the national report;
- Should be consulted for the acceptance of recommendations; and
- Have a key role in the implementation of recommendations, in particular those requiring legislative action.

Special procedures are sometimes the only mechanism that will alert the international community to a particular human rights issue, as they **can address situations in all parts of the world without the requirement for countries to have ratified a particular human rights instrument** or to have agreed to accept the jurisdiction of a particular treaty body.

Engagement with the universal periodic review

The [universal periodic review](#) (UPR) is the inter-State mechanism established by the UN General Assembly in 2006 as a means by which the UN Human Rights Council can review the human rights performance of all States. The mechanism is based on an

interactive dialogue between the State under review, following its submission of a national report, and the member and observer States of the Human Rights Council.

The UPR gives each State the opportunity to explain what actions it has taken to fulfill its human rights obligations towards everyone within its jurisdiction, including refugees.

The process has several stages, including the preparation of the documents on which reviews are based, the review itself, and follow-up to the recommendations. In its first cycle (2008–2011), the UPR considered the human rights records of all 193 UN Member States. In the second cycle (2012–2016) and in subsequent cycles the focus will be on the implementation of the recommendations made to States in all cycles, and on further developments in their human rights situation. Civil society organizations, national human rights institutions (NHRIs) and UN agencies, including UNHCR, actively participate in the process.

States participating in the UPR have recognized a broad range of forced displacement and statelessness issues as falling within the human rights framework and, therefore, within the competence of this mechanism. Recommendations to States have concerned respect for the principle of *non-refoulement*, accession to the 1951 Convention/1967 Protocol, refugee status determination procedures, asylum procedures for victims of trafficking, action to support victims of sexual and gender-based violence, detention of asylum-seekers, and measures needed to eradicate discrimination, including against asylum-seekers and refugees.

Checklist for parliamentarians:

Engagement with human rights mechanisms

Parliamentarians can take the following measures to use human rights mechanisms to promote respect for international standards:

- ✔ Work to ensure parliaments active engagement in the UPR and the inclusion of issues relevant to the protection of asylum-seekers and refugees in the preparation, approval and follow up of national reports for the UPR or other mechanisms such as Concluding Observations and Recommendations of the UN human rights treaty monitoring bodies, including by facilitating their implementation through legislative initiatives. Relevant issues include accession to the 1951 Convention/1967 Protocol; reform of national legislation on asylum; reception conditions; access to quality refugee status determination procedures, to legal assistance, to documentation and other rights; detention; freedom of movement; the situation of persons with specific needs; and racial discrimination.
- ✔ Provide information to Special Rapporteurs or Working Groups looking into the situation of refugees and asylum-seekers and issues that may affect them. Follow up on any recommendations where parliamentary action is called for.
- ✔ Request for a briefing by Special Rapporteurs or Working Groups visiting the country.
- ✔ Urge your government to follow up on requests for information or urgent appeals issued under the special procedures.
- ✔ Take note of UPR recommendations and Concluding Observations and General Comments of treaty monitoring body reports that concern asylum-seekers and refugees and advocate in favour of the actions recommended in them.

Chapter 9

Securing durable solutions



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9.1 Introduction

The search for durable solutions is central to every refugee situation – and is the central concern of each individual refugee. The task of seeking “permanent solutions” for the problem of refugees was assigned to UNHCR when the organization was created. The term most often used today is “durable solutions”:

Durable solutions are achieved when refugees are able to enjoy a secure legal status that assures them access to their rights on a lasting basis. This can be accomplished through voluntary repatriation to the refugee’s country of origin, through settlement and integration in a country of asylum that the refugee reached spontaneously (“local integration”) or by means of organized resettlement. UNHCR’s Statute refers broadly to these pathways to solutions when it speaks of the voluntary repatriation of refugees and of their “assimilation” into new national communities.

UNHCR works with States and civil society to identify and eliminate barriers to solutions, sometimes for groups of refugees, sometimes one refugee at a time. This task can be eased if planning for solutions takes place from the start of a refugee problem, and refugees are enabled and encouraged to be active and self-reliant, rather than passive recipients of humanitarian aid.

Despite the focus on resolving refugee problems, many of the world's refugees – perhaps even most – remain without any durable solution, sometimes for their entire lives. The number and magnitude of protracted refugee situations around the globe reflects difficulty the international community faces in addressing the underlying causes of refugee flows. Parliamentarians can help to raise awareness of the pressing need to find durable solutions for refugees, especially in the context of long-term, often inter-generational, displacement.

This chapter looks at pathways to solutions and related issues as follows:

- Laying the groundwork for solutions: A systems approach
- Voluntary repatriation
- Local integration: Settling in the host community
- Resettlement
- Innovative approaches to resettlement and other migration channels
- Naturalization
- Comprehensive approaches to resolve protracted refugee situations.

9.2 Laying the groundwork for solutions: A systems approach

The foundation of all durable solutions is the inclusion of refugees in national systems and services. This can be supplemented, if needed, by support from the international community. Ensuring that local authorities and civil society are prepared to extend and adapt services and systems to newcomers, and to the specific needs they might have, is an important task for national coordination and training institutions. With such preparation – and if the potential need for international support has been identified in advance – the absorption of even large numbers of new arrivals should be possible. Even if the quality of services is limited at first, the potential gain for both refugees and host communities in investing in host state systems, rather than building parallel ones, can be significant.

Providing services for increased numbers of people – both in countries of asylum and upon return to countries of origin – can require structural changes, for instance in the areas of health and education.

Absorbing new arrivals into administrative, justice and governance systems can be complicated. However, making it possible for refugees – or returnees – to feel part of

the communities in which they live is at the core of any durable solution. The more that refugees are able to exercise their resilience, their adaptability and their self-reliance, the greater chance they have of successfully taking up solutions as opportunities arise.

Where national or local authorities and institutions need financial or technical assistance to extend their national systems to new arrivals or returnees, this should be requested. UNHCR's Executive Committee has recognized this in its [Conclusion No. 112 \(LXVII\)](#) on international cooperation from a protection and solutions perspective.

9.3 Voluntary repatriation

Millions of refugees around the world want nothing more than to be able to return home. Voluntary repatriation in safety and dignity requires the full commitment of the country of origin to reintegrate its own people and to ensure that national protection is effectively reinstated for them. It also requires the support of the international community, to ensure that those who make the decision to return home can rebuild their lives in a stable environment. This is particularly the case when refugees are going back to countries emerging from conflict and where the rule of law is fragile.

The decision to return can be a difficult one. It should not be driven by waning protection and assistance in the country of asylum, although this is often the sad reality. As a result, refugees often return to a tenuous peace in places where reconstruction and reconciliation initiatives have only just begun. They may face economic, legal and social problems in their home countries, including difficulties regaining possession of their property or obtaining restitution for lost property.

In recent years, the level of refugee repatriation has been low. This reflects the high level of prolonged and renewed conflict and the political, economic and social difficulties experienced in many of the countries from which refugees originate. As a result many more refugees remain in protracted exile than in the past.

States and the international community have an interest in ensuring that repatriation is both voluntary and carried out in safety and dignity, with sufficient protection and assistance provided during the repatriation process and after return. Return is more likely to be sustainable if it is supported by rehabilitation and development measures to support national institutions responsible for re-integration and re-establishing the rule of law.

UNHCR's Executive Committee has recognized the challenges returning refugees can face. Its [Conclusion No. 101 \(LV\) on legal safety issues in the context of voluntary repatriation of refugees](#) sets out issues that need to be addressed for repatriation to be **voluntary, safe, dignified** and **sustainable**. The checklist for parliamentarians below contains key recommendations from that Conclusion.

Voluntary repatriation in safety and dignity: What to do?

For refugee repatriation to be voluntary and carried out in safety and dignity:

- Individual refugees must be able to make a **free and informed choice** about return. To be able to do this, refugees need accurate information on the situation in their country of origin, including on physical, material and legal safety issues. The option of making “go-and-see” visits to the place of return should ideally be provided for representatives of the refugee community;
- Countries of asylum should **protect refugees from threats and harassment**, including from any groups or individuals who could seek to impede their access to information on the situation in the country of origin or the exercise of their free will regarding their right to return;
- Refugees should be able, in principle, to **return to their place of origin or to a place of their choosing**, subject only to restrictions as permitted by international human rights law. All efforts need to be made to mitigate the possibility of refugees becoming internally displaced upon return;
- **Family unity should be respected** during and after return, including, where necessary, by making sure that family members of different nationalities are able to remain together as families;
- The **specific needs of returning refugees** – such as female-headed households, children, older people, people with disabilities, and others – should be identified and addressed, in consultation with the communities to which they will return and with the refugees themselves;
- In the case of **unaccompanied or separated children** who express the wish to return, attention should be given to making sure that return is in their best interests. Efforts to trace family members should be completed before return, and return should take place only once adequate reception and care arrangements having been put in place.
- States should give **UNHCR unhindered access** to returning refugees, to monitor their treatment in accordance with international standards, including as regards the fulfilment of amnesties or other assurances on the basis of which refugees may have returned;
- All returning refugees should have the **right to have restored to them or be compensated for any housing, land or property** of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile. Guidance on these issues can be found in the [“Pinheiro Principles”](#) and [Handbook on housing and property restitution for refugees and displaced persons](#);
- Countries of origin should collaborate with UNHCR and other UN entities, international and non-governmental organizations, in particular those with expertise in the rule of law, development and peacebuilding, with a view to **removing legal, administrative and other barriers to return**; and
- The international community at large should mobilize **adequate and sustained support** for countries to which refugees are returning, particularly those emerging from conflict, to help them restore national protection to citizens and former habitual residents seeking to return home.

Checklist for parliamentarians:

Voluntary repatriation

To support the durable solution of voluntary repatriation in safety and dignity, parliamentarians are encouraged to:

In both countries of asylum and of origin

- ✔ At an early stage, identify and resolve any legal and administrative obstacles to voluntary repatriation and to returnees' comprehensive enjoyment of their rights.
- ✔ Support the conclusion of a tripartite agreement involving the country of asylum, country of origin and UNHCR to provide a framework for repatriation that is voluntary, can be carried out in safety and dignity, and will be sustainable. Such an agreement should set out the modalities of voluntary repatriation, the roles and responsibilities of the relevant actors, and the obligations of States with respect to returning refugees.
- ✔ Ensure that repatriation arrangements respect family unity during and after return including, where necessary, by providing for spouses and family members of different nationalities to remain together as families.
- ✔ Ensure that repatriation arrangements identify and address the specific needs of returning refugees – including women, children, older people, persons with disabilities and others with special concerns.
- ✔ Ensure that unaccompanied or separated children do not return unless they are returning to family members or other specific and adequate reception and care arrangements have been put in place. Make sure that family tracing is accomplished prior to return.
- ✔ Recognize the complex challenges of reconciliation in post-conflict situations, and support the use, if necessary, of transitional justice mechanisms to help create conditions conducive to voluntary repatriation and sustainable reintegration.

In the country of asylum

- ✔ To enable each refugee to make a free and informed decision about return, make sure that complete, reliable and accurate information on the situation in the country of origin is available to refugees, including on physical, material and legal safety issues. Encourage the authorities to allow refugee representatives to make “go-and-see” visits to potential places of return.
- ✔ Ensure that measures are in place to protect refugees from threats and harassment from anyone seeking to impede their right to return.

In the country of origin

- ✔ Ensure that the government recognizes its obligation to readmit its nationals, and facilitates their return in practice, including by issuing travel documents as required. Make sure that refugees who are non-nationals but who were habitually resident in the country are also accepted back, including stateless persons.
- ✔ Support measures to encourage voluntary repatriation, including assurances that returning refugees will not face prosecution for having left the country. However, no such amnesty should extend to returning refugees who are charged with a serious violation of international humanitarian law, international human rights law, or a common crime involving death or serious bodily harm, whether committed before or during exile.
- ✔ Ensure that national legislation recognizes the civil status of returning refugees, including changes that occurred during exile (births, deaths, adoptions, marriages and divorces) and documentation attesting to civil status that were issued by competent bodies in the country of asylum or elsewhere. Legislation should take into account the special situation of returning refugee women who may not have documentation proving their civil status.

- ✔ Support the establishment of restitution mechanisms to enable returning refugees to recover any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile. Ensure that returning women are not prevented from securing their property rights. Advocate for just and adequate compensation if property cannot be restored, and for the situation of persons who may be occupying refugee properties to be taken into account.
- ✔ Ensure that repatriation arrangements provide homeless returning refugees, as appropriate, with access to land and/or adequate housing, comparable to local standards.
- ✔ Ensure that repatriation arrangements recognize the equivalency of primary and secondary education received abroad and provide non-discriminatory access for returning refugees to procedures to recognize the equivalency of academic and professional qualifications acquired abroad.
- ✔ Ensure that UNHCR has free and unhindered access to returning refugees, to be able to monitor their treatment in accordance with international standards.

In donor countries

- ✔ Encourage financial and technical assistance be provided to countries to which refugees are returning, in particular countries emerging from conflict. Support can be provided to the full range of initiatives needed for successful repatriation, from de-mining programmes to income-generating projects to long-term development activities.

“ The Executive Committee recalls the voluntary character of refugee repatriation and the right of refugees to return to their own countries, and recognizes in the context of voluntary repatriation, the importance of resolute efforts in the country of origin, including rehabilitation and development assistance to foster the voluntary, safe, and dignified return and sustainable reintegration of refugees, and to ensure the restoration of national protection; ”

UNHCR Executive Committee, [Conclusion No. 112 \(LXVII\) on international cooperation from a protection and solutions perspective](#), 2016

- ▶ [Conclusion No. 101 \(LV\) on Legal safety issues in the context of voluntary repatriation of refugees](#), UNHCR Executive Committee, 2004
- ▶ [Principles on housing and property restitution for refugees and displaced persons](#), UN Sub-Commission on the Promotion and Protection of Human Rights, 2005
- ▶ [Handbook on housing and property restitution for refugees and displaced persons. Implementing the “Pinheiro Principles”](#), UNHCR, Food and Agriculture Agency (FAO), Norwegian Refugee Council (NRC), Inter-Agency Internal Displacement Division (IDD), Office of the UN High Commissioner for Human Rights (OHCHR), UN-HABITAT, 2007

Integration: A multi-dimensional, two-way process

UNHCR's Executive Committee has recognized in [Conclusion No. 104](#) that integration is a dynamic process that involves both the refugees and the host society and needs to be underpinned by values of diversity, non-discrimination and tolerance. It requires:

- Preparedness on the part of refugees to adapt to the local environment and cultural norms and to respect the values of the host community, albeit without having to forgo their own cultural identity, and
- Corresponding readiness on the part of host communities and public institutions to welcome refugees, accept them into the socio-cultural fabric, and to meet the needs of a diverse population.

The process of integration has legal, economic, social and cultural dimensions. All are important for refugees' ability to integrate successfully.

- The **legal dimension** entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of becoming a citizen.
- The **economic** dimension of local integration involves refugees becoming increasingly self-sufficient and contributing to the local economy. This requires not only access to employment but also access to a variety of administrative and legal processes.
- The **social and cultural dimension** requires host communities and refugees to strike a balance and to accept each other's diverse cultures, beliefs, and social norms.

9.4 Local integration: Settling in the host community

Where voluntary repatriation is not a viable option, integrating into the local community in a country of asylum can provide a durable solution. Local integration may follow the recognition of refugee status in an individual asylum procedure, or recognition on a group or *prima facie* basis. Refugee resettlement, discussed further below, is also a pathway to integration.

Integration is a complex and gradual process with distinct but inter-related legal, economic, social and cultural dimensions. It does not happen by itself but requires concerted efforts on the part of refugees and receiving communities. Integration is facilitated when refugees are able to make use of national services and systems. This helps them to understand and adapt to local norms and encourages greater social and cultural connections. Integration may be easier when refugees have ethnic, cultural or linguistic ties with the host community, but these should not be requirements.

States parties to the 1951 Convention commit themselves not only to granting an increasing range of rights to refugees the longer they remain on the territory of the State, but also, under Article 34, to facilitating their integration and naturalization.

The challenge of helping refugees to become fully participating and contributing members of society involves authorities at all levels (central, regional, local), as well as many other actors. These include housing and employment agencies, schools, health care providers, the media, NGOs, employers, trade unions, sports clubs, religious institutions, neighbours,

Refugee story:

A new home and a helping hand

Time seems to have stopped in Dilingala, a sleepy farming village in southern Chad. But for many local residents, including 40-year-old Nicolas, life is forever changing.

The violence ravaging the Central African Republic, 50 kilometres away, spilled over into Dilingala a year ago. Now, Nicolas hosts a refugee family whose home was burnt down, their cattle and property stolen. "People from Central Africa are our brothers," he says. "They gave us shelter when our own country was at war. We owe them hospitality."

Nicolas has turned over one of his eight cabins to a refugee family: Jacob, his two wives, their five children and Jacob's mother. They are restarting their lives with the help of Nicolas and other local villagers, UNHCR and its partners. "We received two oxen, a plough and a cart, and a set of axes and sickles. During the rainy season, we use the oxen in turns to plough our fields."

The cattle and gear were provided as a loan. Jacob and his associates must pay it back in instalments once they start earning

some revenue. Hopefully, income-generating activities will help the refugees become self-reliant – a necessity while conflict drags on at home and returning remains impossible.

By supporting refugees and their host communities alike, the programme helps to prevent envy and resentment between the two communities. Refugees and locals have received credits to start small businesses, as well as building materials, such as thatch and straw bales to repair huts. UNHCR and its NGO partners have also built wells, latrines, storerooms and schools.

To ensure social harmony, UNHCR avoids settling refugees in a village where they would number more than a third of the Chadian population. Limiting the number of refugees in each community also helps reduce the impact on natural resources, especially scarce firewood. Longstanding cultural similarities contribute to successful integration.

In Dilingala's main square, under the shade of mango trees, the market is in full swing. "It is much livelier than before the Central Africans arrived," an old man says.

["A New Home and a Helping Hand"](#), UNHCR, 2015

classmates, co-workers and countless others in the community. Their contributions, large and small, combine to make a difference for refugees who have lost their community and sense of belonging and are starting over in a new land.

State practice

Permanent residency for long-staying refugees In 2012 the Government of **Zambia** began a programme to issue permanent residency permits to up to 10,000 former Angolan refugees. Angolans qualifying for local integration are eligible for citizenship after a period varying with the type of residence permit but averaging 10 years. The Government has also made land available to the former refugees, who are generally well integrated economically and socially, and a [Strategic Framework for the Local Integration of Former Refugees in Zambia](#) was launched in 2014. The programme has benefited from good cooperation between the Zambian and Angolan governments and from support from UNHCR and donor governments.

Checklist for parliamentarians:

Local integration

To promote integration, where feasible, in line with international standards, parliamentarians are encouraged to:

- ✔ Ensure that legislation provides for the timely grant of a secure legal status for recognized refugees. Ideally this would mean permanent residency is provided immediately or, at the latest, following expiry of an initial permit.
- ✔ In the spirit of Article 34 of the 1951 Convention, support the enactment of other measures to facilitate the integration and eventual naturalization of refugees in the host State.
- ✔ Support the **legal dimension** of integration by:
 - Encouraging the use of the 1951 Convention and its 1967 Protocol and relevant human rights instruments as a framework to guide the integration process; and
 - Advocating as needed for the adaptation and revision of national legal and administrative frameworks in order to promote refugees' equal enjoyment of rights and services.
 - Ensuring that legislation and policies respect refugees' fundamental civil, economic and social rights, including freedom of movement and the right to engage in income-generating activities;
 - Where national aliens legislation provides for sanctions for non-fulfilment of integration obligations, such as the withdrawal of residence permits for failure to pass language tests, ensure that such sanctions are not applied to refugees, as these could undermine refugee rights.
- ✔ Promote the **economic dimension** of integration by:
 - Encouraging consideration of ways to facilitate the active participation of refugees in the economic life of the country, including through education and skills development;
 - Examining existing laws and practices with a view to identifying and removing obstacles to refugee employment;
 - Examining ways of facilitating refugees' access to agricultural land where appropriate, to foster opportunities for self-reliance and enhance the food security of refugees and the local population.
 - Advocating for arrangements to recognize academic, professional and vocational diplomas and certificates acquired by refugees in their country of origin;
 - Ensuring that refugee-hosting areas are included in national development plans.
- ✔ Support the **social and cultural dimension** of local integration by:
 - Supporting anti-discrimination policies and actions aimed at combating discrimination and promoting the positive aspects of a diverse society;
 - Advocating for legislation and policies that allow refugees to participate fully in the civic, economic, and social and cultural life of the host country;
 - Encouraging access to education for refugees, including adult education, as well as vocational training;
 - Encouraging the facilitation of refugee family reunification, in recognition of the fact that the presence of family members can reinforce the social support system of refugees and in so doing, promote the integration of refugee families.

Regional practice

Cities of solidarity in Central and Latin America The “cities of solidarity” initiative was part of the 2004 Mexico Declaration and Plan of Action, adopted on the 20th anniversary of the Cartagena Declaration. Under this initiative, cities in **Argentina, Brazil, Chile, Costa Rica, Ecuador, Uruguay** and **Venezuela** made commitments to facilitate the local integration of refugees. Key to the success of the initiative is the aim improving the living conditions and opportunities of both refugees and their host communities. The commitment of local government officials and municipal authorities is central. Their role is to assess needs and establish action plans to address these needs. This may include programmes for housing, education, employment and job training, health and welfare services, help to start businesses, or credit unions. Concrete examples include the construction of additional primary school classrooms, new public lavatories, a new children’s playground, and support for a centre for women victims/survivors of domestic violence.

State practice

Support for refugee integration: Among the projects to support the integration of refugees in **Austria** is “[Interface Vienna](#)”. This EU and government-funded service offers individual counselling on issues such as obtaining housing, childcare, employment, education and language courses, with a focus on initial stabilization and fostering independence. Since 2008 it has helped some 10,000 refugees and subsidiary protection beneficiaries.

- ▶ [Conclusion No. 104 \(LVI\) on Local integration](#), UNHCR Executive Committee, 2005
- ▶ [A new beginning: Refugee integration in Europe](#), UNHCR, 2013

9.5 Resettlement

Resettlement involves the transfer of refugees from an initial country in which they have sought safety to another State that agrees to admit them as refugees, and grant them permanent residence and the opportunity for eventual citizenship. Resettlement is not a right and States are not obliged to accept refugees for resettlement. However, it is a powerful protection tool and an important signal of international solidarity. Resettled refugees are on the pathway to integration from the moment they arrive in their adopted country.

A relatively small number of States engage in refugee resettlement. In terms of absolute numbers of refugees resettled, the United States has been the world’s principal resettlement country since soon after the Second World War. But in per capita terms, many other countries, including Australia, Canada and the Nordic countries, make very significant contributions. Nevertheless, in 2016 just 189,300 refugees were resettled in 37 countries – less than one per cent of the global refugee population.

Resettlement: What does it do?

Resettlement has three parallel functions:

- Resettlement is a tool to **provide international protection** and meet the specific needs of **refugees** whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge.
- Resettlement is also a **durable solution** for refugees, operating alongside voluntary repatriation and local integration in the first country of asylum.
- Resettlement is a **tangible expression of international solidarity** and a way for States **to share responsibility for refugee protection** with the most-affected countries of asylum.

Sometimes, resettlement can be used **strategically** to yield benefits beyond those accruing to the refugees being resettled. For instance, resettlement may help to “unlock” other solutions or encourage host countries to improve conditions for the remaining refugee population.

Countries with resettlement programmes

As of 2017, the following countries offered places for refugee resettlement: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Romania, Spain, Sweden, Switzerland, United Kingdom, United States of America, Uruguay.

Most resettlement countries rely on UNHCR to propose refugees for resettlement. UNHCR supports the resettlement of persons who have been found to be refugees under UNHCR’s mandate. Priority is given to refugees with the most acute legal and physical protection needs, survivors of torture and violence, medical needs, women and children at risk, and for family reunification. To the extent that the number of resettlement places permits, UNHCR also seeks to make resettlement available to refugees who lack prospects of another durable solution.

UNHCR urges resettlement States, when deciding which refugees to resettle, to focus on protection needs, rather than using criteria that are based on integration potential, such as age, family size, health status, level of education, or are otherwise discriminatory.

“ We urge States that have not yet established resettlement programmes to consider doing so at the earliest opportunity. Those which have already done so are encouraged to consider increasing the size of their programmes. It is our aim to provide resettlement places and other legal pathways for admission on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met.”

UN General Assembly, [New York Declaration for Refugees and Migrants](#), Resolution 71/1, 2016

State practice

Resettlement from Nepal of 100,000 long-term Bhutanese refugees Over a period of eight years, more than [100,000 refugees from Bhutan were resettled from Nepal’s camps](#) to third countries.

Refugee story:

Safety under one roof

In a small Austrian town not far from Vienna, the nine children of Ameen Al Dayoub and his wife, Izdihar, have been given a new home and a warm welcome, far from the bombs and bullets that shattered their world.

“In Homs, in Syria, before the war, the whole extended family of 40 people lived in a three-story Arab house,” says 39-year-old Ameen. He worked as a school bus driver, but says sadly those happy times are over. “Homs was a wonderful place. We never made a distinction between Alawites, Shiites, Sunnites or Christians,” he explains, “but that kind of life in Syria has gone forever.”

In 2011, the horrors of war were compounded by the discovery that their three-year-old daughter Thuraya had a life-threatening heart defect. Then their neighbourhood was destroyed and a relative was shot dead.

Together with their nine children, Ameen and Izdihar bundled their belongings into a taxi and fled. It was the beginning of a harrowing odyssey through war-torn Syria. The family initially sought refuge in a camp in Homs, but life was no better and soon it was also hit by intense fighting.

Eventually, they managed to cross the border into Jordan. There, as a result of Thuraya’s heart condition, they were selected for resettlement to Austria.

They landed at Vienna airport in mid-2014. Six weeks later, Thuraya was successfully operated on. At first the family lived together in a three-room apartment. Then they were able to move to a family house with a garden. The faces of the family still light up when they remember their warm welcome by volunteers. “Not even back home in Syria did we experience such help and hospitality,” Izdihar says.

Being welcomed from the beginning really made a difference. The help and ongoing support they received included help learning German and mastering daily life and simply having someone to talk to.

Learning German is now the family’s first priority. The six youngest children all attend school, while the eldest three and their father have taken courses offered by the Public Employment Service Austria. Local volunteers come to the house to help with homework and give additional German lessons.

Their neighbours can’t fault the family. “I can say absolutely nothing negative about them,” says one.

Ameen is determined to show his gratitude to Austria. Once he speaks better German, he hopes to work for the Red Cross or Caritas – maybe even the local volunteer fire brigade. “Austria is already home for us,” he says, happily.

“[Safety under one roof](#)”, UNHCR, 2016

This followed an agreement reached in 2007 to resolve the protracted situation of Bhutanese refugees who had fled into Nepal the early 1990s. One of the largest and most successful programmes of its kind, it involved eight resettlement countries – **Australia, Canada, Denmark, the Netherlands, New Zealand, Norway, the United Kingdom, and the United States**. Only a tenth of the refugee population remains in Nepal and efforts continue to achieve lasting solutions for them.

- ▶ [UNHCR resettlement handbook](#), UNHCR, 2011
- ▶ [Paving the way: A handbook on the reception and integration of resettled refugees](#), International Catholic Migration Commission (ICMC), 2011

Checklist for parliamentarians:

Resettlement

If your country already participates in resettlement, parliamentarians are encouraged to:

- ✔ Ensure that procedures, policies and programmes in resettlement countries are developed and implemented to provide an effective framework supporting resettlement that permits resettled refugees to become self-reliant, integrate, and find stability.
- ✔ Advocate for resettlement criteria to be based on protection needs rather than on integration potential, so that those most at risk can find safety and security. Discourage use of selection criteria that may be seen as discriminatory, such as race, religion, level of education, language or other skills.
- ✔ Advocate for an increase in the number of resettlement places made available, commensurate with current needs and in

recognition of the importance of resettlement for protection, durable solutions and responsibility-sharing.

- ✔ Encourage making emergency or urgent resettlement places available for refugees who are threatened with *refoulement* or whose physical safety is otherwise seriously jeopardized in the country where they have sought refuge.

If your country does not yet engage in refugee resettlement, parliamentarians can furthermore:

- ✔ Encourage discussion about setting up a resettlement programme, and consider starting with a pilot programme.
- ✔ Promote exchanges of information and experience with countries that have well-established resettlement schemes.

9.6 Innovative approaches to resettlement and other migration channels

With increasing displacement and limited opportunities for refugee resettlement, fresh thinking is needed about ways to expand resettlement, and about forms of mobility that can complement traditional resettlement programmes and offer an alternative to risky, irregular movements of refugees.

“ We will consider the expansion of existing humanitarian admission programmes, possible temporary evacuation programmes, including evacuation for medical reasons, flexible arrangements to assist family reunification, private sponsorship for individual refugees and opportunities for labour mobility for refugees, including through private sector partnerships, and for education, such as scholarships and student visas. ”

UN General Assembly, [New York Declaration for Refugees and Migrants](#), Resolution 71/1, 2016

What new approaches can complement traditional resettlement?

Legal avenues that can be pursued to complement and expand existing resettlement and humanitarian admission programmes include:

- **Private sponsorship** mechanisms enable refugees to resettle to another country with the support of private citizens, NGOs, faith-based groups, universities, businesses and others. Private sponsorship programmes, such as the long-standing one in [Canada](#), help to increase the overall number of refugees a country is able to resettle, and create bonds between refugees and receiving communities that ease integration. Private sponsorship can provide a framework for refugee family reunification beyond the often-narrow criteria of host States.
- In recent years, in particular in response to the Syria crisis, several countries have introduced **humanitarian admission programmes** to provide for the expedited admission of refugees for either temporary or permanent stay. Humanitarian admission schemes may have some of the characteristics of private sponsorship, where for instance they are used to enable refugees and others already established in the resettlement country to petition to bring in relatives to whom they are able to provide some support.
- **Humanitarian visas** allow people in need of international protection a way of travelling legally to a third country where they can ask for asylum. States such as **Argentina** and **Brazil** (see refugee story below) that have humanitarian visa schemes allow such people to travel and be admitted to the territory. Upon arrival their status is converted to that of refugee, or to asylum-seeker with access to asylum procedures. Humanitarian visas can also be used for refugees and beneficiaries of complementary protection to enable their families to reunite, for instance, if members of the extended family cannot do so under regular family reunion provisions.
- **Expand family reunification:** Adopting a more flexible approach to the definition of a family and expediting refugee family reunification can make

a major contribution to durable solutions and discourage irregular movements.

- **Academic scholarships** allow refugees to continue their education. Such initiatives can involve civil society, universities, and government actors collaborating to develop and fund academic scholarships and provide travel, accommodation, subsistence and tuition. They ensure students are provided with proper travel documentation and visas for the duration of their studies and may include language training, cultural orientation and psychosocial support for students. Ideally, upon completion of their studies, students would be allowed to request an extension of their residence permits, or apply to convert their status to a more secure one or to apply for asylum.
- **Labour mobility:** Refugee protection is distinct from migration for economic reasons. But labour migration has the potential to facilitate durable solutions for refugees. Two concrete ways in which this could occur involve enabling refugees to take advantage of regional freedom-of-movement protocols, such as among the Economic Community of West African States (ECOWAS) or the Mercosur countries, and opening up existing labour migration programs to refugees.

New approaches: What elements need to be in place?

For new approaches to provide be consistent with principles of international protection they should:

- Ensure the right to apply for asylum where needed;
- Guarantee protection from *refoulement*;
- Provide an appropriate legal status and documentation;
- Recognize fundamental civil rights and dignity as persons before the law;
- Provide access to available basic services and psychosocial and medical support, as required;
- Enable self-reliance; and
- Ensure adequate accommodation in a location that protects refugees' well-being.

Refugee story:

The Syrians starting over in Brazil

Twelve-year-old Hanan Dacka's family fled Syria to escape the war. Across the ocean in São Paulo, Brazil, they have once again found happiness and hope. "I love being in Brazil," says Hanan. "I'm so happy to be here. I have my friends here and my teacher is the best."

After four years of war and flight, Hanan, her father Khaled, mother Yusra, brother and baby sister relocated from Za'atari refugee camp in Jordan to this sprawling metropolis under Brazil's humanitarian visa programme, which offers those fleeing the conflict in Syria a chance to start over.

Since 2013, Brazilian consulates in the Middle East have been issuing the special humanitarian visas under simplified procedures to allow survivors of the war to travel to Brazil, where they can then present an asylum claim.

Despite the geographical distance, Brazil recently extended the "open-door" policy for a further two years to give more people a chance to rebuild their lives after fleeing the war.

According to Beto Vasconcelos, the National Secretary of Justice and President of the Brazilian National Committee for Refugees, the special visa scheme was needed because of the "serious human rights violations" in war-ravaged Syria. He says that this scheme "responds to the logic of protection [for] humanitarian reasons and takes into consideration specific difficulties in conflict zones."

The whole family say they love Brazil and plan on settling here for good, since they do not see an end in sight for the war in Syria. "You turn back into a human being when you arrive in Brazil," says Khaled. "I've never felt so good."

["The Syrians starting over in Brazil"](#), UNHCR, 2016

Note: [Normative Resolution No. 17](#) issued in 2013 allows visas to be issued "on humanitarian grounds ... to individuals affected by the armed conflict in the Syrian Arab Republic who wish to seek refuge in Brazil". The programme was extended for two further years in 2015. By March 2016 nearly 8,500 special humanitarian visas had been approved and 2,250 Syrians had been granted asylum.

State practice

[Private sponsorship in Canada](#): When the Government of Canada announced in late 2015 that it would resettle 25,000 Syrian refugees within the next several months, it turned to Canadian citizens for help. Private sponsorship began in Canada in 1978 as a response to the Vietnamese boat people crisis, and has been part of Canada's refugee resettlement programme ever since. Groups of citizens, NGOs, community groups and other private groups shoulder the bulk of the responsibility for helping newcomers during their first year in Canada. Of the first 25,000 Syrians Canada resettled, nearly half were privately sponsored. Research shows that private sponsorship facilitates integration, since newcomers have a ready-made community support group on arrival.

State practice

[Agreement relating to residence permits for nationals of States parties to Mercosur and associated States](#) Under this Agreement, citizens of these States have since 2009 been able to benefit from simplified processes when applying for a resident permit. Among those able to benefit are Colombian refugees who settled in other South American

countries and/or who wish to migrate to other Mercosur States. The residence permit gives them the same social, cultural and economic rights as nationals of the receiving country, including the right to work, to family reunification, and to access social security benefits.

- ▶ [Solutions strategies](#), UNHCR, 2015
- ▶ [Legal avenues to safety and protection through other forms of admission](#), UNHCR, 2014
- ▶ [Global strategy for livelihoods: A UNHCR strategy 2014-2018](#), UNHCR, 2014
- ▶ [Labour mobility for refugees: Workshop in Geneva, 11-12 September 2012 – Summary conclusions](#), UNHCR, 2012

9.7 Naturalization

The culmination of integration comes when refugees are able to acquire the nationality of their new country of asylum. According to Article 34 the 1951 Convention, States parties should facilitate the naturalization of refugees and in particular, “make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”

Depending on the national context, citizenship may be granted after a certain period of permanent residence and after language and other integration requirements are met. In some countries, such as **Belgium, Canada** and **the United States**, uptake of citizenship is high among refugees and follows a relatively short period of permanent residence. In other countries, requirements such as non-reliance on social security for a certain period of time, may be difficult for refugees to fulfil and may delay naturalization.

Only a few countries distinguish in their naturalization statistics between refugees and other new citizens, so information on the number of refugees who are naturalized is limited.

Checklist for parliamentarians: Innovative approaches to resettlement and other migration channels

To support expansion of opportunities for durable solutions, parliamentarians can:

- ✔ Encourage the development of mechanisms for private sponsorship of refugees for resettlement.
- ✔ Consider using humanitarian admission schemes as a flexible way of responding to urgent needs in particular situations, such as large-scale displacement, although such schemes should not affect existing resettlement programmes
- ✔ Support the use of other forms of admission and settlement for refugees, including humanitarian visas, family reunification, and study channels.
- ✔ Where labour migration programmes exist, seek to make these accessible to refugees.
- ✔ Where regional frameworks permit labour mobility between States, ensure that refugees are able to benefit from such initiatives.

Checklist for parliamentarians:

Naturalization

To promote long-term solutions for refugees, parliamentarians are encouraged to:

- ✔ Support the enactment of provisions to facilitate refugees acquisition of citizenship in your country, for example by:
 - Reducing, for refugees, the period of required residence and lowering the fees and costs of naturalization proceedings;
 - Applying less stringent language, literacy and civic knowledge requirements;
 - Waiving any requirement to renounce another nationality if it would not be possible for a refugee to meet that requirement;
 - Taking account of any other obstacles to naturalization that refugees may face, in view of their particular situation.

State practice

Naturalization in Tanzania: In 2014, the Government of the [United Republic of Tanzania](#) granted citizenship to former Burundian refugees who had fled their country in 1972. Over decades, they had become largely self-reliant and were taxpaying members of society. In 2016, 151,000 former Burundian refugees were issued citizenship certificates. A [new strategy](#) for the full integration of these new citizens, most of whom had already achieved a high level of self-sufficiency, was adopted, with socio-economic initiatives to benefit both refugees and host communities. The United Republic of Tanzania previously naturalized some 32,000 Rwandan refugees in 1982 and in 2014 concluded the naturalization of some 3,000 Somali Bantu refugees who had fled Somalia in 1991.

9.8 Comprehensive approaches to resolve protracted refugee situations

Many refugees live in situations of uncertainty for many years, not allowed to integrate in their countries of asylum or even to enjoy freedom of movement within those countries, nor able safely to return home. This has very negative impacts on refugees' physical and psychological well-being. Protracted refugee situations also impose considerable burdens on host countries, in particular those with limited resources.

Resolving protracted refugee situations is a complex process that requires clear political will on all sides. Each situation is unique. In some, the focus will be on addressing the causes of flight and creating the normative and institutional framework needed to achieve justice and peace in the refugees' country of origin. In such cases, voluntary repatriation may be viewed as the primary solution. In others, where resolution of the underlying causes of flight appears unlikely, the search for solutions may concentrate on local integration and resettlement to third countries. In most instances, however, comprehensive approaches incorporating some combination of all three durable solutions will be required, along with co-operation from the governments of countries of origin, asylum and resettlement, as well as from refugees, development actors, host communities and others.

“ The Executive Committee ... Calls upon States and all other relevant actors to commit themselves, in a spirit of international solidarity and burden sharing, to comprehensive, multilateral and multi-sectoral collaboration and action in addressing the root causes of protracted refugee situations; in ensuring that people are not compelled to flee their countries of origin in the first place to find safety elsewhere; and in resolving the protracted refugee situations which persist, in full respect for the rights of the affected persons. ”

[UNHCR Executive Committee, Conclusion No. 109 \(LXI\) on Protracted Refugee Situations, 2009](#)

State practice

Area-based self-reliance and resilience programmes:

In response to protracted refugee situations in Uganda, the Government, the UN Resident Coordinator, UNHCR and other stakeholders are pursuing area-based self-reliance and resilience programmes to enable refugees to contribute positively to their host communities. This strategy seeks to improve food self-sufficiency, provide vocational training, harmonize social service delivery, and support local authorities' capacity to deliver essential services. Refugee management and protection have been incorporated into Uganda's National Development Plan as well as the United Nations Development Assistance Framework. Such inclusive planning represents a vital step toward solutions.

- ▶ UNHCR Executive Committee [Conclusion No. 109 on protracted refugee situations](#) (2009)
- ▶ [Livelihoods and self-reliance](#), UNHCR, 2016

Protracted refugee situations: What are they?

A protracted refugee situation is one in which refugees live in what can best be described as an indefinite state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled. Refugees in this situation are often unable even to achieve self-sufficiency, and remain dependent on humanitarian aid.

For statistical purposes UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees have been in exile for five years or more in a given asylum country.

Based on this definition, UNHCR estimated that there were some 11.6 million refugees (almost 70 per cent of refugees of concern to UNHCR) in protracted situations at the end of 2016. These refugees were living in 27 host countries, constituting an overall total of 32 protracted situations.

Checklist for parliamentarians:

Protracted refugee situations

Parliamentarians are urged to encourage their governments to contribute to securing comprehensive solutions for protracted displacement, doing whatever it can to unlock long-term refugee situations and begin progress towards their resolution. More specifically:

In countries of origin

- ✔ Appeal to the government to demonstrate clear political will to end the protracted displacement of its citizens.
- ✔ Explore and advocate for measures to enable refugees to return home without fear of reprisal or harm, and to regain their rights as citizens.
- ✔ Support social and economic measures to ensure that the return of refugees will be sustainable and to encourage their reintegration.

In countries of asylum

- ✔ Support measures to promote the self-sufficiency of refugees, thereby making an investment in future durable solutions.
- ✔ Support local integration where possible and in a manner that takes into account the needs and views of hosting communities and refugees.

In countries of resettlement and donor countries

- ✔ Support the strategic use of resettlement as a tool of burden and responsibility sharing and explore more flexible approaches consistent with national legislation and regulations to bridge gaps which may exist between national resettlement criteria and the specific needs and situation of refugees in protracted situations.
- ✔ Support the provision of humanitarian and development assistance and other forms of support to countries where voluntary repatriation is foreseeable or taking place.
- ✔ Where local integration is appropriate and feasible, provide financial assistance and other forms of support, including development assistance, for the benefit of refugees and the communities hosting them. Also mobilize support for rehabilitation of refugee-impacted areas in the host country from which refugees have returned.

Annexes

Annex 1

Model instrument of accession to the Convention relating to the Status of Refugees of 1951

Model instrument of accession to the Convention relating to the Status of Refugees of 1951

WHEREAS a Convention Relating to the Status of Refugees was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons on the 25th day of July, one thousand, nine hundred and fifty-one, and is open for accession pursuant to Article 39 thereof;

AND WHEREAS it is provided in section 3 of the said Article 39 that accession thereto shall be effected by deposit of an instrument with the Secretary-General of the United Nations;

NOW THEREFORE, the undersigned, [Title of Head of State or Government, or of Foreign Minister], hereby notifies the accession of [State concerned] to the said Convention, and declares that [State concerned] considers itself bound by alternative (b) of Article 1B(1) thereof, that is to say "events occurring in Europe or elsewhere before 1 January 1951".

GIVEN under my hand in _____ this _____ day of _____ two thousand and _____.

[Public Seal and Signature of Custodian if appropriate]

[Signature of Head of State, Head of Government or Foreign Minister]

Annex 2

Model instrument of accession to the Protocol relating to the Status of Refugees of 1967

Model instrument of accession to the Protocol relating to the Status of Refugees of 1967

WHEREAS the Protocol Relating to the Status of Refugees was adopted by the General Assembly of the United Nations on the 16th day of December, one thousand, nine hundred and sixty six, and is open for accession pursuant to Article V thereof;

AND WHEREAS it is provided in Article V that accession thereto shall be effected by deposit of an instrument with the Secretary-General of the United Nations;

NOW THEREFORE, the undersigned, [Title of Head of State or Government, or of Foreign Minister], hereby notifies the accession of [State concerned] to the said Protocol.

GIVEN under my hand in _____ this _____ day of _____ two thousand and _____.

[Public Seal and Signature of Custodian if appropriate]

[Signature of Head of State, Head of Government or Foreign Minister]

Annex 3

Model instrument of succession to the Convention relating to the Status of Refugees of 1951

Model instrument of succession to the Convention relating to the Status of Refugees of 1951

WHEREAS the Convention Relating to the Status of Refugees, done at Geneva on 25 July 1951, was ratified by [Former State Party];

AND WHEREAS the Government of [Successor State] has examined the said Convention;

THE GOVERNMENT of [Successor State] declares that it regards the said Convention as continuing in force for [Successor State] and hereby succeeds to the same;

NOW THEREFORE, the undersigned, [Title of Head of State or Government, or of Foreign Minister], hereby notifies the succession of [Successor State] to the said Convention, and declares that [Successor State] considers itself bound by alternative (b) of Article 1B(1) thereof, that is to say "events occurring in Europe or elsewhere before 1 January 1951."

GIVEN under my hand in _____ this _____ day of _____ two thousand and _____.

[Public Seal and Signature of Custodian if appropriate]

[Signature of Head of State, Head of Government or Foreign Minister]

Annex 4

Model instrument of succession to the Protocol relating to the Status of Refugees of 1967

Model instrument of succession to the Protocol relating to the Status of Refugees of 1967

WHEREAS the Protocol Relating to the Status of Refugees was adopted by the General Assembly of the United Nations on the 16th day of December, one thousand, nine hundred and sixty six, and was ratified by [Former State Party];

AND WHEREAS the Government of [Successor State] has examined the said Protocol;

THE GOVERNMENT of [Successor State] declares that it regards the said Protocol as continuing in force for [Successor State] and hereby succeeds to the same;

NOW THEREFORE, the undersigned, [Title of Head of State or Government, or of Foreign Minister], hereby notifies the succession of [Successor State] to the said Protocol.

GIVEN under my hand in _____ this _____ day of _____ two thousand and _____.

[Public Seal and Signature of Custodian if appropriate]

[Signature of Head of State, Head of Government or Foreign Minister]

Annex 5

Glossary of key refugee protection-related terms

Accelerated procedures The prioritized processing of claims with shorter waiting times between registration, interview and decision and sometimes with a simplified examination of the claim. Some countries use accelerated procedures to determine clearly abusive or manifestly unfounded applications, as well as manifestly well-founded applications. See also: *Safe country of origin*.

Accession The act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an “instrument of accession” with the Secretary-General of the United Nations. Accession has the same legal effect as ratification, acceptance or approval. Unlike ratification, which must be preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession. The Secretary-General, as depositary, has tended to treat instruments of ratification that have not been preceded by signature as instruments of accession and the States concerned have been advised accordingly. See also: *Customary international law, Ratification, Reservation, Succession, and Treaty*.

Admissibility procedure A procedure used in some States to determine whether an asylum claim should be considered in substance in the country where it has been made or if another State is responsible for doing so. Admissibility procedures assess whether the applicant has already found effective protection in another country and whether responsibility for assessing the particular asylum application in substance is assumed by a third country, where the applicant will be protected from *refoulement* and will be able to seek and

enjoy asylum in accordance with accepted international standards. See also: *First country of asylum*, and *Safe third country*.

Alternatives to detention Any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement, while their status is being resolved. See also: *Detention*.

Armed violence and conflict Situations that are marked by a certain level or spread of violence or other forms of serious public disorder that affect the civilian population and from which people flee and seek asylum. Such situations may involve armed violence between different groups in society or between the State and armed groups. The refugee definition contained in the 1951 Convention is often directly applicable to affected civilians fleeing armed violence and conflict and seeking asylum. Regional refugee definitions contained in the 1969 OAU Refugee Convention and Cartagena Declaration may also apply to such persons, while complementary forms of protection may be appropriate where, for instance, there is no link to a Convention ground. See also: *Complementary protection*.

Assistance Aid provided to address the physical, material and legal needs of persons of concern to UNHCR. This may include food items, medical supplies, clothing, shelter, seeds and tools, as well as the provision of infrastructure, such as schools and roads. In UNHCR practice, assistance supports and complements the achievement of protection objectives.

Asylum The grant by a State of protection on its territory to persons outside their

country of nationality or habitual residence, who are fleeing persecution or serious harm or for other reasons. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, humane standards of treatment and eventually a durable solution.

Asylum-seeker An individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. It can also refer to someone who has not yet submitted an application but may be in need of international protection. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee in such countries is initially an asylum-seeker.

Best interests principle A principle set out in Article 3 of the Convention on the Rights of the Child which affirms: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." A child's best interests are determined by a variety of individual circumstances, such as the age and level of maturity of the child, the presence or absence of parents, and the child's environment and experiences.

Cancellation of refugee status Term used by UNHCR to refer to a decision to invalidate a refugee status recognition which should not have been granted in the first place. Cancellation affects determinations that have become final, that is, they are no longer subject to appeal or review. It has the effect of rendering refugee status null and void from the date of the initial determination (*ab initio* or *ex tunc* – from the start or from then). See also: *Revocation*.

Cartagena Declaration on Refugees A declaration adopted by the Colloquium on the International Protection of Refugees in Central America in November 1984. The Cartagena Declaration broadens the definition of refugee enshrined in the Convention relating to the Status of Refugees to include "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order." Although not legally binding, the provisions of the Cartagena Declaration have been incorporated into the legislation of most Latin and Central American countries.

Cessation clauses Legal provisions setting out the conditions under which refugee status comes to an end because it is no longer needed or justified. Cessation clauses are found in Article 1(C) of the 1951 Convention and in Article I(4) of the 1969 OAU Refugee Convention.

Child "Every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier", as defined in Article 1 of the Convention on the Rights of the Child. The term includes adolescents and is preferable to the term "minor". See also: *Best interests principle*.

Child soldier Any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.

Citizen see: *National*.

Civilian and humanitarian character of asylum Requirement of refugee camps and settlements, since the grant of asylum is a peaceful and humanitarian act which should not be regarded as unfriendly by another State. Primary responsibility for ensuring the civilian and humanitarian character of asylum lies with States. It involves locating refugee camps and settlements at a reasonable distance from the border; maintaining law and order; curtailing the flow of arms into refugee camps and settlements; preventing their use for the internment of prisoners of war; disarming armed elements; and identifying, separating and interning combatants.

Climate change displacement Displacement resulting from the effects of climate change, such as flooding, sea level rise, drought or other disasters.

Common European asylum system Standards agreed by European Union Member States aiming to harmonize asylum policy and practice based on the “full and inclusive application of the Geneva Convention”. Key Directives adopted include Directives on temporary protection, the reception of asylum-seekers, who qualifies for refugee status or “subsidiary protection,” and standards for asylum procedures, as well as the Dublin III Regulation.

Complementary protection Various mechanisms used by States to regularize the stay of persons found to fall outside the scope of the 1951 Convention or its 1967 Protocol, but who are nevertheless in need of international protection. See also: *Subsidiary protection*.

Confidentiality The obligation that information pertaining to a person disclosed in a relationship of trust will not be disclosed or otherwise made available to unauthorized persons or entities in ways that are inconsistent with the

understanding of the original disclosure or without prior permission.

Convention see *Treaty*.

Convention against Torture Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, adopted in 1984. It has particular significance in international refugee law because it provides absolute protection from *refoulement*, or forced return, to situations where there is a substantial risk of torture.

Convention on the Rights of the Child (CRC) A 1989 Convention that sets comprehensive standards for the protection of the rights of children. It applies to all children without discrimination of any kind (Article 2). Refugee children are therefore covered by the standards set by the CRC.

Convention relating to the Status of Refugees (1951 Convention) A Convention that establishes the most widely applicable framework for the protection of refugees. The Convention was adopted in July 1951 and entered into force in April 1954. Article 1 of the 1951 Convention limits its scope to “events occurring before 1 January 1951.” This restriction was removed by the 1967 Protocol relating to the Status of Refugees. As of January 2016, there were 148 States parties to the 1951 Convention and/or the 1967 Protocol. See also: *Protocol relating to the Status of Refugees*.

Convention refugee A person who is outside his or her former country of origin or habitual residence owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, who is unable or unwilling to avail himself or herself of the protection of that country, or to return to it for reasons of fear of

persecution, and who is not otherwise excluded from the refugee definition. See also: *Mandate refugee*, *Prima facie refugee* and *Refugee*.

Customary international law International norms that derive their authority from the constant and consistent practice of States, rather than from formal expression in a treaty or legal text. In order for State practice to contribute to the formation of customary international law, that practice should be conducted with a sense of legal obligation. Customary international law is binding on all States regardless of whether they have ratified any relevant treaty, save for States which are “persistent objectors.” See *Treaty*.

Derivative status see *Family unity*.

Detention Restriction on freedom of movement, usually through enforced confinement. Consistent with international refugee and human rights law and standards, detention of asylum-seekers should normally be avoided and be a measure of last resort. See also: *Alternatives to detention*.

Disability see *Person with disabilities*.

Discrimination see *Non-discrimination*.

Diversity Different values, attitudes, cultural perspectives, beliefs, ethnic backgrounds, nationality, sexual orientation, gender identity, ability, health, social status, skills and other specific personal characteristics. Initiatives to ensure the protection of refugees need to take account of the diversity of the population concerned and the differing experiences and challenges faced by groups that often face social exclusion. See also: *Gender identity*, *Person with disabilities*, *Person with specific (special) needs*, and *Sexual orientation*.

Durable solutions The means by which the situation of persons of concern to UNHCR can be satisfactorily and permanently resolved to enable them to live normal lives. In the refugee context, this generally involves voluntary repatriation to the country of origin, local integration in the country of asylum, or resettlement to another country, resulting in the latter two cases in naturalization. See also: *Local integration*, *Naturalization*, *Resettlement* and *Voluntary repatriation*.

Effective remedy Appeal or review mechanism involving, in the asylum context, an appeal or review by an authority different from and independent of that made the initial decision, in which the asylum-seeker has access to legal advice and translation. The remedy should be available in practice as well as in law and should permit considerations of both fact and law, generally with an appeal interview or hearing. The appeal should in principle have automatic “suspensive effect”; that is, the applicant should be allowed to remain on the territory until a final decision on the appeal has been made.

Exclusion clauses Legal provisions that deny the benefits of international protection to persons who would otherwise satisfy the criteria for refugee status. In the 1951 Convention, the exclusion clauses are found in Articles 1D, 1E and 1F. These clauses apply to the following categories: persons who are receiving protection or assistance from UN agencies other than UNHCR; persons who possess the rights and obligations attached to the possession of nationality of their country of residence; and persons in respect of whom there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime, or acts contrary to the purposes and principles of the United Nations.

Executive Committee of the High Commissioner's Programme (ExCom) A Committee charged with advising the High Commissioner on the exercise of his or her functions and overseeing the Office's finances and administration. As of mid-2016 the Executive Committee was composed of representatives of 98 Member States with a demonstrated interest in refugee issues. A number of international, inter-governmental, and non-governmental organizations also have observer status on the Executive Committee.

Executive Committee Conclusions on International Protection The consensus on international protection issues reached by UNHCR's Executive Committee in the course of its discussions. Although not formally binding, Executive Committee Conclusions represent collective international expertise on refugee matters including legal expertise. They help advance common understandings and set standards in many areas of protection and solutions and are one way international protection regime is further developed.

Expulsion Removal of a lawful resident from the territory of a State by government authorities. Under Article 32 of the 1951 Convention, national security and public order are the only permissible grounds for the expulsion of a refugee. The procedures by which a decision for expulsion is reached should be fair and just and the refugee should be allowed a reasonable time to seek admission to another country.

Extradition A formal process involving the surrender of a person by one State (the "requested State") to the authorities of another State (the "requesting State") for the purpose of criminal prosecution or the enforcement of a sentence. Where the person whose extradition is sought (the "wanted person") is a refugee or asylum-seeker, his or her special protection needs must be taken into consideration.

Family reunification The process of bringing together families, particularly children and older dependants, with their family or previous care-provider for the purpose of establishing or re-establishing long-term care.

Family tracing In the refugee context, efforts to ascertain the whereabouts of family members or close associates of persons of concern to UNHCR. Tracing may be conducted for the purposes of family reunification, in the context of durable solutions, or simply to facilitate contacts between family members. The International Committee of the Red Cross (ICRC) runs a Central Tracing Agency that has special competence in this area.

Family unity The right to family life and family unity is inherent in the universal recognition of the family as the fundamental group unit of society. Respect for the right to family unity requires that States refrain from action which would result in family separations, and that they take measures to maintain the unity of the family and reunite family members who have been separated.

Female genital mutilation (FGM) A practice involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. FGM is classified into four types and is sometimes called "female genital cutting."

First country of asylum A concept referring to the determination in an admissibility procedure that an asylum-seeker should be denied access to substantive determination of his or her claim on the basis that he or she has already found protection in another country, can return there, and can avail him- or herself of such protection. See *Admissibility procedure* and *Safe third country*.

Gender The relations between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another. Sex is a biological determination. Gender is not static or innate but acquires socially and culturally constructed meaning over time. Gender often defines the duties, responsibilities, constraints, opportunities and privileges of women and men in any context.

Gender identity Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms. See *Gender-related persecution, Lesbian, gay, bisexual, transgender and intersex (LGBTI) and Sexual orientation*.

Gender-related persecution A non-legal term encompassing the range of different claims in which gender is a relevant consideration in the determination of refugee status. Both women and men may bring gender-related claims, but they are more commonly brought by women. Typically, gender-related persecution encompasses, but is not limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation and other harmful traditional practices, punishment for transgression of social mores, and discrimination on account of someone's sexual orientation or gender identity. See *Female genital mutilation, Gender identity, and Sexual orientation*.

Generalized violence see *Armed violence and conflict*.

Group determination of refugee status see *Prima facie approach* and *Prima facie refugee*.

Human rights Agreed international standards that recognize and protect the inherent dignity and the equal and inalienable rights of every individual, without any distinction as to race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status. They may form part of customary international law and/or may be set out in various national, regional and international legal instruments.

See *Customary international law* and *International human rights law*.

Humanitarian admission An expedited process providing protection in a third country for refugees with urgent needs. Residence under humanitarian admission may be either permanent or temporary, depending upon a State's legislation. Humanitarian admission may be used for specific categories of refugees, such as vulnerable persons, extended family members, or individuals with medical needs.

Illegal entry see *Non-penalization for illegal entry*.

Interception Practice of some States of extending border control measures outside their territory or territorial waters to prevent unauthorized arrivals. States are, however, bound by their obligations under international law, including in particular respect for the principle of *non-refoulement*, wherever and however they assert their jurisdiction.

Intergovernmental organization (IGO) An organization made up of States members. Examples include the United Nations Organization (UN), the African Union (AU), the Organization of American States (OAS), the European Union (EU), and the League of Arab States (LAS).

Internally displaced persons (IDP) Persons who have been forced or obliged

to flee from their home or place of habitual residence, “in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” as defined in the *Guiding Principles on Internal Displacement*.

Internal flight alternative (or “internal relocation principle”) A concept asserting that, where a well-founded fear of persecution for a Convention reason has been established in one part of the country of origin, there may be a specific area of the country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of an applicant’s case, he or she could reasonably be expected to establish him- or herself and live a normal life. If a State wishes to apply this concept, as part of a holistic assessment of a claim to refugee status, it must assess whether it would be both relevant and reasonable for the refugee to relocate to a specific alternative location within the country.

International cooperation and solidarity A principle that there is a collective responsibility regarding humanitarian crises and complex population movements without which a satisfactory solution to refugee situations cannot be achieved. While such situations often cannot be solved by one State alone, collective responses do not substitute for the existing obligations of States under international law, including *non-refoulement*.

International criminal law A body of international law developed notably by the International Criminal Court on the basis of its Statute, as well as by other international tribunals such as those for the former Yugoslavia and for Rwanda.

International human rights law The body of customary international law and human rights instruments that recognizes and protects human rights. Refugee law and human rights law complement each other. See: *Human rights*, and *International customary law*.

International humanitarian law (or the law of armed conflict) The body of law, regulations and principles that governs situations of international or non-international armed conflict. The core instruments of international humanitarian law are the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977. Virtually every State is a party to the Geneva Conventions of 1949.

International protection All actions aimed at ensuring the equal access and enjoyment of their rights by women, men, girls and boys of concern to UNHCR, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law). It includes interventions by States or UNHCR on behalf of asylum-seekers and refugees to ensure that their rights, security, and welfare are recognized and safeguarded in accordance with international standards. Such interventions include: ensuring respect for the principle of *non-refoulement*; admission to safety; access to fair procedures for the determination of refugee status; humane standards of treatment; and the implementation of durable solutions. UNHCR is the only UN agency with a mandate for the protection of refugees at the global level. See *Protection*.

International refugee law The body of customary international law and international instruments establishing standards for refugee protection. The cornerstone of refugee law is the Convention and its 1967 Protocol relating

to the Status of Refugees. See *Customary international law*.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) An umbrella term used to describe a diverse group or community of people who do not conform to traditional notions of male and female gender roles existing in most societies. See: *Gender identity, Gender-related persecution, and Sexual orientation*.

Livelihoods A combination of the resources used and the activities undertaken in order to live. The resources might consist of individual skills and abilities (human capital), land, savings and equipment (natural, financial and physical capital, respectively), and formal support groups or informal networks that assist in the activities being undertaken (social capital). See: *Self-reliance and Reintegration*.

Local integration A durable solution for refugees that involves their permanent settlement in a country of asylum. Local integration is a complex and gradual process, comprising three distinct but interrelated dimensions: legal, economic, and socio-cultural. The process is often concluded with the naturalization of the refugee. See: *Naturalization*.

Mandate refugee A person who is determined to be a refugee by UNHCR acting under the authority of its Statute and relevant resolutions of the UN General Assembly and the Economic and Social Council (ECOSOC). Mandate refugee status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol. See: *Convention refugee, Prima facie refugee, Refugee and UNHCR Mandate*.

Mass influx A situation which may, inter alia, have some or all of the following characteristics: (i) considerable numbers of

people arriving over an international border; (ii) a rapid rate of arrival; (iii) inadequate absorption or response capacity in host States, particularly during the emergency; (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers.

Migrant There is no universally accepted definition of the term "migrant." It is usually understood to describe someone who chooses to move, not because of a direct threat of persecution or death, but to improve his or her condition by finding work or education, for family reunion, or other reasons. Unlike refugees, migrants continue to enjoy the protection of their own government, even when abroad, and if they return, they will continue to receive that protection. Unless they express a fear of persecution for one of the reasons set out in the 1951 Convention or regional refugee definitions, they are not entitled to benefit from protection as refugees. Migrants, like refugees, are protected under international human rights law.

Minor see *Child*.

National A person recognized as having the status of a legal bond with a State as provided for under law. Some States use the word "nationality" to refer to this legal bond, while other States use the word "citizenship." See: *Nationality*.

National human rights institutions

Institutions such as human rights commissions or ombudspersons that work to promote and protect human rights and can play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level.

Nationality The legal bond between a person and a State. Generally, nationality can be established at birth by a person's place of birth (*ius soli*) and/or bloodline

(*jus sanguinis*) or can be acquired through naturalization. The concept is referred to as “citizenship” in some national jurisdictions.

Naturalization The culmination of the process of local integration, whether in the first country of asylum or another country following resettlement, involving a refugee’s acquisition of the nationality of the country of asylum. Article 34 of the 1951 Convention requires States parties as far as possible to facilitate the naturalization of refugees and in particular to “make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”. See: *Durable solution, Local integration, and Resettlement*.

Non-discrimination An approach that aims to ensure that all persons are equal before the law and are entitled to the equal protection of the law without distinction based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term anti-discrimination implies a more proactive approach to tackling the causes and impacts of discrimination.

Non-governmental organization (NGO) An organization that is functionally independent of, and does not represent, a government or State. Use of the term derives from Article 71 of the UN Charter permitting ECOSOC to grant consultative status to international, regional, sub-regional and national NGOs, provided they have recognized standing within their particular field of competence, an established headquarters, a democratically adopted constitution, authority to speak for their members, a representative structure, appropriate mechanisms of accountability to their members, who must exercise effective control over policies and actions, and resources derived primarily from independent contributions.

Non-penalization for illegal entry

Provision in Article 31 of the 1951 Convention requiring States not to penalize refugees on account of their illegal entry or presence if they are coming directly from a territory where their life or freedom is threatened, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Non-refoulement A core principle of international human rights and refugee law that prohibits States from returning individuals in any manner whatsoever to territories where they may be at risk of persecution, torture, or other forms of serious or irreparable harm. The most prominent expression of the principle of *non-refoulement* in international refugee law is Article 33(1) of the 1951 Convention. The principle also is part of customary international law. See: *Convention relating to the Status of Refugees, and Customary international law*.

OAU (Organization of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa

The regional instrument adopted in 1969 which complements the 1951 Convention. The OAU Convention replicates the refugee definition found in the 1951 Convention, but also includes any person compelled to leave his or her country because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality”. The OAU is now called the African Union.

Obligations of refugees The obligation of refugees to conform to the laws and regulations of any country in which they find themselves, as set out in Article 2 of the 1951 Convention. In particular, refugees must refrain from any acts that jeopardize the safety, security or public order of communities or countries of asylum.

Onward movement The phenomenon of refugees or asylum-seekers moving without formal authorization from their first host country to another country in search of protection and solutions.

Particular social group (membership of a ...) One of the five grounds set out in Article 1A(2) of the 1951 Convention on the basis of which persecution may be established for an asylum-seeker to be recognized as a refugee. A particular social group refers a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights. See: *Persecution*, and *Well-founded fear of persecution*.

Persecution A term not expressly defined in the 1951 Convention that can be considered to encompass serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm. Lesser forms of harm may cumulatively amount to persecution. What amounts to persecution will depend on the individual circumstances of the case, including the age, gender, opinions, feelings and psychological make-up of the applicant. Persecution is normally related to action by the authorities of the State. It may also emanate from non-state agents, such as family members or the general population. See: *Well-founded fear of persecution*.

Persons of concern to UNHCR All persons for whom UNHCR is mandated to provide protection and assistance. This includes refugees, asylum-seekers, returnees, stateless persons, and, in many situations, internally displaced persons (IDPs). UNHCR's authority to act on behalf of persons of concern other than

refugees is based on various UN General Assembly and Economic and Social Council (ECOSOC) resolutions. See: *Asylum-seeker*, *Internally displaced persons*, *Refugee*, *Stateless person* and *UNHCR mandate*.

Persons with disabilities Persons with "long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" as defined in the Convention on the Rights of Persons with Disabilities.

Person with specific (special) needs Any person who requires specific assistance in order to enjoy the full range of his or her human rights. Children (especially unaccompanied and separated children), trafficked persons, women at risk, older persons, and persons with disabilities are among the groups that often have specific needs.

Prima facie approach Recognition of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual residence. A *prima facie* approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition. Although a *prima facie* approach may be applied within individual refugee status determination procedures, it is more often used in group situations, where individual status determination is impractical or unnecessary. See: *Prima facie refugee*.

Prima facie refugee A person recognized as a refugee, by a State or UNHCR, on the basis of objective criteria related to the circumstances in his or her country of origin and his or her flight, which justify a presumption that he or she meets the

criteria of the applicable refugee definition. A person recognized as a *prima facie* refugee enjoys the same status as a person who has been recognized as a refugee individually. See: *Convention refugee*, *Mandate refugee*, *Prima facie approach*, and *Refugee*.

Profiling see: *Screening*.

Protection A concept that encompasses all activities aiming to achieve full respect for the rights of the individual in accordance with the letter and spirit of human rights, refugee and international humanitarian law. Protection involves creating an environment conducive to preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring human dignity through reparation, restitution and rehabilitation. See *International protection*.

Protocol see: *Treaty*.

Protocol relating to the Status of Refugees A Protocol to the 1951 Convention relating to the Status of Refugees agreed in 1967. The Protocol lifts the time and geographic limits found in the Convention and applies most of the Articles of the 1951 Convention (Articles 2–34) to all persons covered by the Protocol's refugee definition. See: *Convention relating to the Status of Refugees*.

Protracted Refugee Situation A situation in which refugees are in a long-lasting state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance. For statistical purposes UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees have been in exile for five years or more in a given asylum country.

Racial discrimination Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life, as defined in the Convention on the Elimination of All Forms of Racial Discrimination.

Ratification The act whereby a State establishes its consent to be bound by a treaty. Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval. Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level. Upon ratification, the State becomes legally bound under the treaty. See: *Accession*, *Customary international law*, *Reservation*, *Succession* and *Treaty*

Reception centre A location with facilities for receiving, processing and attending to the immediate needs of newly arrived asylum-seekers or refugees.

Refoulement see *Non-Refoulement*.

Refugee 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 [or her] nationality and is unable or, owing to such fear, is unwilling to avail him [or her]self of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence as a

result of such events, is unable or, owing to such fear, is unwilling to return to it", as defined in Article 1A(2) of the 1951 Convention and who is not otherwise excluded from refugee status. Under the 1969 OAU Convention and the Cartagena Declaration, a refugee is also any person who is outside his or her country of origin or habitual residence and is unable to return there because their life, physical integrity or freedom have been threatened by generalized violence or events seriously disturbing public order. See: *Convention refugee*, *Mandate refugee* and *Prima facie refugee*.

Refugee law see *International refugee law*.

Refugee status determination (RSD)

The legal and/or administrative process undertaken by States and/or UNHCR to determine whether a person should be recognized as a refugee in accordance with national, regional and international law. See Chapters 6 and 7.

Refugees sur place Persons who were not refugees when they left their countries of origin, but who become refugees at a later date, owing to intervening events. *Refugees sur place* may owe their fear of persecution to a change in the country of origin, such as through a coup d'état, or to *bona fide* political, religious or other activities undertaken in the country of refuge.

Regional refugee instruments

International legal documents relating to refugees that are adopted by States or intergovernmental organizations within a geographical region or sub-region. Such instruments normally complement the Convention relating to the Status of Refugees and reflect the peculiar character of refugee issues within the particular geographical area. See: *OAU Convention Governing the Specific Aspects of*

Refugee Problems in Africa and *Cartagena Declaration on Refugees*.

Registration of asylum-seekers The process of recording, verifying and updating information about persons seeking asylum with the aims of protecting them, documenting them, and implementing durable solutions.

Reintegration A process which enables returnees to regain their physical, social, legal and material security needed to maintain life, livelihood and dignity and which eventually leads to the disappearance of any observable distinctions *vis-à-vis* their compatriots. See: *Livelihoods*, and *Voluntary repatriation*.

Repatriation see *Voluntary Repatriation*.

Rejection at the border In the refugee context, the refusal to allow an asylum-seeker entry into a prospective country of asylum. Rejection at the border may result in a violation of the principle of *non-refoulement*.

Reservation A statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. States can make reservations to a treaty when they sign, ratify, accept, approve or accede to it. Reservations cannot be contrary to the object and purpose of the treaty. A State may, unless the treaty provides otherwise, withdraw its reservation or objection to a reservation completely or partially at any time. See: *Accession*, *Customary international law*, *Ratification*, *Succession* and *Treaty*.

Resettlement The selection and transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection

against *refoulement* and provides a resettled refugee and his or her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country. As such, resettlement is a mechanism for refugee protection, a durable solution, and an element of burden and responsibility-sharing. See: *Durable Solution, Naturalization, Resettlement country, and Resettlement selection criteria.*

Resettlement country A country that offers opportunities for the transfer and permanent settlement of refugees. See: *Durable solution, Naturalization, Resettlement, and Resettlement selection criteria.*

Resettlement selection criteria Criteria by which UNHCR and resettlement countries select candidates for resettlement. Resettlement under the auspices of UNHCR is strictly limited to mandate refugees who have a continued need for international protection and who meet the criteria of the UNHCR Resettlement Handbook. Individual countries use a wide range of resettlement criteria. See: *Durable solution, Naturalization, Resettlement, Resettlement country, and Women-at-risk.*

Revocation of refugee status Withdrawal of refugee status in situations where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the 1951 Convention after having been recognized as a refugee. This has effect for the future (*ex nunc* – from now). See: *Cancellation.*

Rights of refugees The range of rights set out in Articles 3 to 34 of the 1951 Convention, some of which apply to asylum-seekers and refugees as soon as they come under the jurisdiction of the State, such as protection from *refoulement*

and expulsion and non-penalization for illegal entry. Other rights are acquired progressively depending on the refugee's level of attachment to and stay in the country of asylum. International human rights law also sets out rights that apply to refugees, when they are not conditioned upon citizenship.

Safe country of origin A concept applied in refugee status determination whereby an asylum-seeker's application may be determined under accelerated procedures on the basis that he or she comes from a safe country of origin. An assessment of a country as safe must be based on precise, reliable, objective and up-to-date information from a range of sources; must take account not simply of international instruments ratified and legislation enacted, but also of the country's respect for human rights and the rule of law in practice; and must be able to be adjusted promptly to take account of changing circumstances. See: *Accelerated procedures.*

Safe third country A concept referring to the determination in an admissibility procedure that an asylum-seeker could and should have requested asylum in a country that is safe for him or her and is *en route* to the country where asylum is being requested. In such situations, a State may elect not to examine the claim in substance, where the third country agrees to readmit the person and examine the merits of his or her claim in a fair and efficient asylum procedure and where the person can if recognized be granted refugee status. See: *Admissibility procedure and First country of asylum.*

Screening A non-binding process used mainly in the context of managing mixed migratory movements that precedes any formal status determination procedures and aims to differentiate among categories of persons, including asylum-seekers, who are travelling as part of such movements.

Also referred to as profiling, it is a case management tool, rather than a substantive procedure with legally binding outcomes.

Self-reliance The ability of an individual, household or community to meet essential needs and to enjoy social and economic rights in a sustainable manner and with dignity. By becoming self-reliant, refugees and displaced persons lead active and productive lives and are able to build strong social, economic and cultural ties with their host communities. Self-reliance can assist in ensuring that persons of concern are better protected by strengthening their capacity to claim their civil, cultural, economic, political and social rights. See: *Livelihoods*.

Separated child A child separated from both parents, or from his or her previous legal or customary primary care-giver, but not necessarily from other relatives. This may, therefore, include a child accompanied by other adult family members. See: *Unaccompanied child*.

Sexual and gender-based violence (SGBV) Any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to persons on the basis of their sex or gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It encompasses, but is not limited to: (i) violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (ii) violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced

prostitution; (iii) violence perpetrated or condoned by the State, wherever it occurs.

Sexual orientation Each person's capacity for emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different or the same gender or more than one gender. See: *Gender identity, Gender-related persecution, and Lesbian, gay, bisexual, transgender and intersex (LGBTI)*.

Smuggling of migrants The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into (the territory of) a State of which the person is not a national or a permanent resident. See: *Trafficking in persons*.

Solidarity see: *International cooperation and solidarity*.

Specific needs see: *Person with specific needs*.

Stateless person A person who is not considered as a national by any State, under the operation of its law, either because he or she never had a nationality or because he or she lost it without acquiring a new one.

Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute) The document, adopted by the General Assembly in 1950, that establishes UNHCR's mandate and structure and provides the criteria under which persons would come within the competence of UNHCR. UNHCR's mandate was subsequently extended by the Convention relating to the Status of Refugees and by General Assembly and ECOSOC resolutions. See: *UNHCR mandate*.

Subsidiary protection A form of international protection given to persons

found not to meet the Convention definition of a refugee but who face a real risk of serious harm. This includes the death penalty or execution, torture or inhuman or degrading treatment, or a serious and individual threat to their life or person by reason of indiscriminate violence in situations of armed conflict. See: *Complementary protection*.

Succession In situations of State succession when States have disintegrated or been divided, the new State or States are in principle bound by treaties to which the predecessor State was a State party. They should accordingly notify the Secretary-General of their succession to these treaties. See: *Accession, Customary international law, Ratification, Reservation, and Treaty*.

Supervisory role of UNHCR The role assigned to UNHCR under its Statute, the 1951 Convention and its 1967 Protocol of supervising implementation of international instruments on refugees.

Temporary protection An arrangement or device developed by States to offer protection, of a temporary nature, to people arriving *en masse* from situations of armed violence and conflict, without prior individual status determination. Temporary protection has been mostly used in industrialized States.

Trafficking in persons 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. Such exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms

of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. See: *Smuggling of migrants*.

Treaty A binding international agreement concluded between States or international organizations with treaty-making power and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. The fact that such agreement is not in written form does not affect its legal force. See: *Accession, Customary international law, Ratification, Reservation, and Succession*.

UN special procedures The general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Special procedures are either an individual – a Special Rapporteur or Independent Expert – or a Working Group. They are prominent, independent experts working on a voluntary basis, appointed by the Human Rights Council.

UN human rights treaty monitoring bodies The committees of independent experts appointed to monitor the implementation by States parties of the core international human rights treaties. They are called “treaty bodies” because each is created in accordance with the provisions of the treaty it oversees. In many important respects, they are independent of the UN system, although they receive support from the UN Secretariat and report to the General Assembly.

Unaccompanied child 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. See: *Separated child*.

UNHCR mandate The role and functions of UNHCR as set out in the UNHCR Statute, the 1951 Convention, the OAU Refugee Convention, the Cartagena Declaration, and resolutions of the UN General Assembly and the Economic and Social Council (ECOSOC). UNHCR's mandate under its Statute is to provide international protection to refugees and together with governments to seek solutions to their plight. UNHCR has additional mandates concerning issues of statelessness under the 1961 Convention on the Reduction of Statelessness and related UN General Assembly resolutions, concerning returnees, and, in many situations, internally displaced persons (IDPs). See: *Internally displaced persons*, *Persons of concern to UNHCR*, *Stateless person*, and *Statute of the United Nations High Commissioner for Refugees*.

Universal periodic review The inter-State cooperative mechanism, established by the UN General Assembly in 2006 as one of the procedures of the UN Human Rights Council, to review the human rights performance of all States. The mechanism is based on an interactive dialogue between the State under review and the member and observer States of the Human Rights Council (which itself replaced the UN Commission on Human Rights in 2006).

Voluntary repatriation The free and informed return of refugees to their country of origin in safety and dignity. Voluntary repatriation may be organized (i.e. when it takes place under the auspices of the concerned States and/or UNHCR) or spontaneous (i.e. when refugees repatriate by their own means with little or no direct involvement from government authorities or UNHCR). See: *Durable Solutions* and *Reintegration*.

Well-founded fear of persecution A key phrase in the refugee definition contained in the 1951 Convention. What amounts to a well-founded fear of being persecuted depends on the particular circumstances of the case. The 1951 Convention requires that the well-founded fear of being persecuted must be linked to one or more of the five specified grounds: race, religion, nationality, membership of a particular social group, and political opinion. See: *Persecution*, and *Particular social group (membership of)*.

Women-at-risk Female refugees with specific protection needs, including those who require resettlement in accordance with the UNHCR resettlement criteria. See: *Person with specific needs*, and *Resettlement selection criteria*.

Annex 6

Selected websites with information on aspects of refugee protection

Topic	URL
Status of ratifications of UN Treaties on UN Treaty webpage	https://treaties.un.org/pages/participationstatus.aspx under Chapter V Refugees and Stateless Persons
Inter-Parliamentary Union (IPU)	http://www.ipu.org/english/home.htm and http://www.ipu.org/french/home.htm (in French)
UNHCR main website	http://www.unhcr.org/
UNHCR Executive Committee (ExCom) Conclusions	http://www.refworld.org/type/EXCONC.html
High Commissioner's Dialogue on Protection Challenges	http://www.unhcr.org/pages/501a39166.html
UNHCR statistics and operational data, including the annual Global Trends report published on 20 June each year.	http://www.unhcr.org/figures-at-a-glance.html
UNHCR's Global Focus website	http://reporting.unhcr.org/
UNHCR's Solutions Alliance	http://www.solutionsalliance.org
UNHCR's information portal on major emergencies and protracted displacement situations	http://data.unhcr.org
UNHCR Refworld	http://www.refworld.org
UNHCR Protection Manual on Refworld	http://www.refworld.org/protectionmanual.html
UNHCR Refworld on human rights	http://www.refworld.org/humanrights.html
Good Practices for Urban Refugees, Database for professionals working with urban refugees	http://www.urbangoodpractices.org/

Addressing Large Movements of Refugees and Migrants	https://refugeesmigrants.un.org
Global Humanitarian Platform	www.globalhumanitarianplatform.org
Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change	https://www.nanseninitiative.org/
Office of the High Commissioner for Human Rights (OHCHR)	http://www.ohchr.org/EN/Pages/WelcomePage.aspx
OHCHR and National Human Rights Institutions (NHRIs)	http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx
Universal Periodic Review (UPR)	http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

A few words about...

UNHCR

UNHCR, the United Nations refugee organization, is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees, and together with governments to work for the resolution of refugee problems.

UNHCR's primary purpose is to safeguard the rights and wellbeing of refugees. UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State. By assisting refugees to return to their own country voluntarily or to settle in another country, UNHCR also seeks lasting solutions to their plight.

UNHCR's efforts are mandated by the organization's Statute and guided by the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

Over the years, the UN General Assembly and the UN Economic and Social Committee (ECOSOC) have expanded UNHCR's responsibility to include protecting various groups of people not covered by these instruments who are in a variety of other situations of forced displacement resulting from armed violence and conflict. Some of these people are known as "mandate" refugees; others are returnees, stateless persons, and, in certain circumstances, internally displaced persons.

The organization seeks to reduce situations of forced displacement by encouraging States and other institutions to create conditions that are conducive to the protection of human rights and the peaceful resolution of disputes. In pursuit of the same objective, UNHCR seeks to consolidate the reintegration of returning refugees in their country of origin, thereby averting the recurrence of refugee-producing situations.

UNHCR offers protection and assistance to refugees and others in an impartial manner, on the basis of their need and irrespective of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status. In all of its activities, UNHCR pays particular attention to the specific needs of children and seeks to promote the equal rights of women and girls and vulnerable and/or marginalized groups.

In its efforts to protect refugees and to promote solutions to their problems, UNHCR works in partnership with governments, regional organizations, international and non-governmental organizations.

UNHCR is committed to the principle of participation, by consulting refugees on decisions that affect their lives, and to mainstreaming age, gender and diversity.

The Inter-Parliamentary Union

The Inter-Parliamentary Union (IPU) is a unique organization made up of national parliaments from around the world. We protect and build democracy through political dialogue and concrete action. As at December 2017, the IPU has **178 Member Parliaments** and 11 Associate Members. We work closely with the United Nations and other partner organizations whose goals we share.

We are committed to **an ever-growing field of work** with peace, justice, democracy and development at its heart. We tackle issues as diverse as HIV/AIDS, human rights, gender equality, climate change and the political participation of young people. We help countries as they emerge from conflict or develop as democracies.

We also work to bring the views of the world's citizens into global decision-making, through our increasingly important work on **international governance**.

Today, we are the organization that most closely reflects world public opinion. More than 6.5 billion of the world's seven billion people live in states whose parliaments are members of IPU - and it is their elected representatives who engage in and steer our policies.

By bringing parliaments together, we bring people together.

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