

Response to Vulnerability in Asylum

Project Report



Response to Vulnerability in Asylum



Cooperation
that
Counts



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GLOSSARY

1951 Convention	1951 Geneva Convention relating to the Status of Refugees 1951
1967 Protocol	1967 Protocol relating to the Status of Refugees 1967
Accommodation Centre	A place used for the collective housing of asylum-seekers
APD	Asylum Procedures Directive
ASPIs	The Asylum-seekers' Protection Indices
ASQAEM	Asylum System Quality Assurance and Evaluation Mechanism
Asylum-seeker	A third-country national or a stateless person who has made an application for international protection in respect of whom a final decision has not yet been taken
BIA	Best Interest Assessment
BID	Best Interest Determination
Capacity Building	A process by which individuals, institutions and societies develop abilities, individually and collectively, to perform functions, solve problems, and set and achieve their goals
CEAS	Common European Asylum System
Country of Origin	The country of nationality or, in the case of a stateless person, the country of habitual residence
CREDO	Improving Credibility Assessment in EU Asylum Procedures
EASO	European Asylum Support Office
EC	European Commission
ENGI	European Network of Guardianship Institutions
ERF	European Refugee Fund of the European Commission
ExCOM	Executive Committee of the High Commissioner's Programme
EU	European Union
EVASP	Enhancing Vulnerable Asylum-Seekers' Protection
DAI	Directorate for Asylum and Integration, Romania

FDQ	Further Developing Asylum Quality project
Focus Group Discussion	A method to gather qualitative data from a group of persons pre-selected according to specific criteria
Gender-related Persecution	Persecution that targets or disproportionately affects a particular gender
GEO	Government Emergency Ordinance, Romania
GII	General Inspectorate for Immigration, Romania
Health Care Professionals	This includes doctors and other medics, psychiatrists and psychologists, and social workers
IRCT	International Rehabilitation Council for Torture Victims
IVP	EASO module on Interviewing Vulnerable Persons
LAR	Law on Asylum and Refugees, Bulgaria
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NASS	National Asylum Support Service, UK
National Project Officers	National consultants working on the RVA project
NGO	Non-governmental Organization
NHS	National Health Service, UK
NRM	National Referral Mechanism
OFF	Office for Foreigners, Poland
OIN	Office of Immigration and Nationality, Hungary
PROTECT	Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment
PTSD	Post-traumatic Stress Disorder
QI	Quality Initiative
Reception Centre	A facility for the collective housing of asylum-seekers, either for a short period prior to their transfer to an accommodation centre or for the duration of the asylum procedure

Refugee Convention	1951 Geneva Convention relating to the Status of Refugees
Refugee Status Determination Procedures	Legal and administrative procedures undertaken by UNHCR and/or States to determine whether an individual should be recognized as a refugee in accordance with national and international law
RRC	Registration Reception Centre, Bulgaria
RRCE	Regional Representation for Central Europe
RSD	Refugee Status Determination
RVA	Response to Vulnerability in Asylum
SAR	State Agency for Refugees, Bulgaria
Separated Children	Children separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives
Sexual and Gender-based Violence	Acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty, that target individuals or groups of individuals on the basis of their gender
SGBV	Sexual and Gender-based Violence
Torture	Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him (her) or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public or other person acting in an official capacity
Transit Centre	A facility for accommodating asylum-seekers for a short period and prior to their transfer to an accommodation or reception centre
UASC	Unaccompanied Asylum-seeking Children
UKBA	United Kingdom Border Agency
Unaccompanied Children	Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

This report addresses the research that has been undertaken within the framework of the Response to Vulnerability in Asylum (RVA) project which commenced in late 2012 and will continue until the end of December 2013. The RVA project is financed by UNHCR and the European Refugee Fund and involves the participation of the following states: Bulgaria, Hungary, Poland, Romania, Slovakia and the United Kingdom. As part of the RVA project activities, participating states have exchanged information on national asylum policies and processes. The participating authorities are warmly thanked for their cooperative efforts.

The RVA project aims to promote an understanding of the particular difficulties and challenges faced by vulnerable asylum-seekers and thus to work towards improving their identification and the response of states to their particular needs. Chapter 1 provides an overview of the background to the RVA project, its objectives, aims, methodology and outputs. Chapter 2 discusses current state practice and law in relation to vulnerable asylum-seekers in the participating RVA project states. Chapter 3 explores the question of who is a vulnerable asylum-seeker with reference to UNHCR, European and other materials emanating from relevant projects. The ensuing chapter considers state obligations in relation to identifying vulnerable asylum-seekers and assessing their specific needs. Chapter 5 considers state obligations to address specific needs and the work undertaken under the RVA project to develop capacity in this regard.

This report presents recommendations to states on the definition of vulnerable asylum-seekers, their identification, and developing capacity to address specific needs.

In all of the countries, in-depth research and main activities in relation to national asylum processes has now formally been completed. Work on further assisting the authorities will be mainstreamed into UNHCR activities.

Introduction

1.1. Background to the Response to Vulnerability in Asylum project

Asylum-seekers are vulnerable persons *per se* as those forced to leave their home become detached from familiar sources of support and are faced with a number of difficult challenges related to negotiating asylum procedures and establishing a new life. However, within the asylum-seeking population there are those that may face particular difficulties and thus may require specific support and/or be in need of special procedural guarantees. This includes children who are unaccompanied or separated from their parents or primary caregivers, persons with medical or psychological needs, families with young children, single parents, victims of human trafficking, and survivors of torture, sexual or gender-based violence or other harm.

There is consensus that identifying and assessing need is most beneficial at an early stage of an asylum procedure as this facilitates the receipt of the specific social, psychological, and medical assistance that may be required. In addition, early identification allows for the appropriate procedural safeguards to be instituted in order to ensure that vulnerable asylum-seekers are not disadvantaged in putting forward their asylum claim. For some vulnerable asylum-seekers, specific support and procedural needs may only be identified at a later stage of the asylum procedure and this may be the situation, for example, in cases involving post-traumatic stress disorders or sexual and gender-based violence.

Within the above context, the Response to Vulnerability in Asylum (RVA) project, co-financed by the European Refugee Fund (ERF), began in November 2012 with the aim of taking a step towards promoting an understanding of the particular difficulties and challenges faced by vulnerable asylum-seekers and thus to work towards improving their identification and the way in which states respond to their specific needs. The RVA project involves the participation of the asylum authorities of Bulgaria, Hungary, Poland, Romania and Slovakia.¹ The asylum authority of the United Kingdom was invited to actively participate during the early months of the project (November 2012 – May 2013). Further details in relation to the countries participating in the RVA project are outlined in chapter 2.

The RVA project aims may be summarized as follows:

- To improve the *understanding* of vulnerability;
- To develop methods for *identifying* vulnerable asylum-seekers;
- To improve the process of *assessing* the specific support and procedural needs of vulnerable asylum-seekers and *acting* upon results;

¹ UNHCR operations in these countries are coordinated and overseen by the UNHCR Regional Representation for Central Europe based in Budapest, Hungary - <http://www.unhcr-centraleurope.org/>

- To take steps towards *developing* the capacity of the national authorities, lawyers, health care professionals, and NGOs to address the specific support and procedural needs of vulnerable asylum-seekers.

1.2. The RVA project in the context of UNHCR Quality Initiative projects

In 2008, the UNHCR Regional Representation for Central Europe launched the Asylum System Quality Assurance and Evaluation Mechanism (ASQAEM) project, which was implemented until 2010.² The ASQAEM project, also co-financed by the European Refugee Fund, aimed to improve the quality of asylum processes within the participating countries of the central European region by developing guidance and undertaking trainings based on the findings of in-depth audits of procedures, interviews and asylum decisions. In addition, during ASQAEM the quality of appeals of first instance asylum decision-making was also reviewed and related guidance developed. One of the prominent aims of the ASQAEM project was to assist states to establish internal quality assurance mechanisms and concomitantly to develop the capacity of states, in cooperation with UNHCR, to internally audit decision-making processes and to act upon the findings accordingly.³

The inspiration for the ASQAEM project came from the UK where UNHCR and the UK Border Agency (now the Home Office) had since 2004 been jointly involved in a Quality Initiative (QI) project aimed at improving the quality of asylum decision-making and establishing an internal quality assurance mechanism.⁴ In this regard, the UK offered advice and information during the implementation of the ASQAEM project.

In April 2010, UNHCR launched the Further Developing Asylum Quality (FDQ) project, which was implemented until 2011.⁵ The FDQ project in the central European region aimed to essentially build upon the work that had begun under the ASQAEM project; namely, to consolidate national quality audit mechanisms.⁶ At the same time, the FDQ project expanded the reach of quality assurance work, and included countries within the UNHCR Regional Representation for Southern Europe. The project also involved the participation of Austria, Germany and the UK to facilitate the exchange of information relating to country asylum practices.⁷

² ASQAEM officially began on 01 September 2008 and concluded on 28 February 2010. The following states participated in the project: Austria, Bulgaria, Germany, Hungary, Poland, Romania, Slovakia, and Slovenia.

³ For the work undertaken, see ASQAEM, *Summary Report* (Feb 2010).

⁴ The UK Quality Initiative project has now moved into a Quality Integration phase, see <http://www.unhcr.org.uk/what-we-do-in-the-uk/quality-initiative-and-integration.html>

⁵ Further Developing Asylum Quality in the EU – Establishing new Quality Assurance Mechanisms in Southern Europe and Consolidating National Quality Mechanism in Central Europe (FDQ) (April 2010- September 2011).

⁶ UNHCR, *Building in Quality: a Manual on Building a High Quality Asylum System*, September 2011.

⁷ The central European countries participating in the FDQ were Bulgaria, Hungary, Poland, Romania and Slovakia. Southern Europe: Cyprus, Greece, Italy and Portugal (Austria, Germany and UK). For the country summaries, see UNHCR, *Further Developing Asylum Quality in the EU (FDQ): Summary Project Report* (September 2011).

All of the central European countries participating in the RVA project also participated in the above two quality initiative projects. As noted, the RVA project has at its aim to develop the capacity of states to better identify vulnerable asylum-seekers and address their specific support and/or procedural needs. In this regard, the RVA project partly intends to build upon previous quality initiative projects to the extent of promoting the appropriate procedural guarantees for vulnerable asylum-seekers, ensuring that the asylum authorities understand and take note of the specific issues involved in interviewing vulnerable asylum-seekers and are fully versed in the applicable law and guidance on deciding claims. The project also aims to develop the capacity of internal quality assurance mechanisms to ensure the realization of procedural guarantees for vulnerable asylum-seekers.

1.3. The legal background

There are instruments relating to the applicable standards for the reception of asylum-seekers and appropriate procedural guarantees which highlight distinguishable standards for vulnerable applicants. Sources emanate from UNHCR Guidelines adopted in the exercise of its supervisory responsibilities under its Statute⁸ and Article 35 of the 1951 Convention relating to the Status of Refugees (Refugee Convention),⁹ from legislation under the Common European Asylum System (CEAS),¹⁰ from international refugee and human rights law, and from regional human rights law. These standards have been instrumental in determining the aims of the RVA project, to shape its methodology and to characterize the trainings undertaken and the written outputs. Chapters 3 – 5 address some of the relevant standards in relation to defining who may be a vulnerable asylum-seeker, identifying such applicants, and addressing their needs.

The launch of the RVA project has been timely in terms of the development of standards under the Common European Asylum System. In the first phase, the imperative for Member States to take into account the specific needs of vulnerable asylum-seekers was underlined. There is now however a greater emphasis to identify vulnerable asylum-seekers and to address their specific support and procedural needs in the new European recast Directives, which follows from the recognition that ‘inadequacies exist with regard to the definitions and procedures applied by Member States for the identification of more vulnerable asylum-seekers and the lack of the necessary resources, capacities and expertise to provide an appropriate response to such needs.’¹¹ The recast Reception Conditions and Asylum Procedures Directives must be transposed by 20 July 2015.

⁸ Article 8 of the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, annex to UN General Assembly Resolution 428 (V) (14 December 1958). Article 8 confers responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees.

⁹ Convention relating to the Status of Refugees, (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 and the Protocol relating to the Status of Refugees, (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267. Article 35 obliges State Parties to cooperate with UNHCR in the exercise of its functions, including in particular to facilitate its duty of supervising the application of the provisions of the 1951 Convention.

¹⁰ For information on the Common European Asylum System see the Europa website: <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/>

¹¹ European Commission, *Green Paper on the future Common European Asylum System* (COM(2007) 301 final).

1.4. Methodology

The research methodology employed was essentially qualitative, involving the gathering of information and data from various sources and the monitoring of practices. In summary, the following was undertaken in the central European countries participating in the project:

- i. A review of national legislation, case law, policies and practices in light of established criteria and standards relevant to vulnerable asylum-seekers;
- ii. Monitoring missions to facilities for asylum-seekers;
- iii. Meetings and consultations with state authorities;
- iv. Meetings and consultations with state and non-state health care professionals, including social workers and psychologists;
- v. Meetings and consultations with asylum stakeholders, such as non-governmental organisations (NGOs);
- vi. The selection and review of case files and decisions;
- vii. The observation and review of personal interviews;
- viii. Surveys of training needs;
- ix. Focus group discussions with asylum-seekers (in selected participating countries);
- x. Meetings of National Project Officers involved in the implementation of the project to discuss and share information on national practices.

The main research activities in all of the countries may be summarized in figures as follows:

	Monitoring Missions *	Meetings and consultations with state authorities	Meetings and consultations with civil society and NGOs	Meetings and consultations with state health care professionals **	Meetings and consultations with non-state health care professionals **	Review of case files and Decisions	Review of interviews ***	No. of people surveyed ****
Bulgaria	21	7	8	7	4	26	42	20
Hungary	12	7	23	9	20	14	4	15
Poland	16	28	21	25	6	10	N/A	4
Romania	16	6	5	N/A	5	18	33	29
Slovakia	9	8	3	3	3	8	3	40
UK	2	5	6	N/A	3	N/A	N/A	N/A
Total	76	61	66	44	41	76	82	108

* monitoring missions include visits to registration, transit, reception and accommodation centres.

** health care professionals include social workers, doctors, psychologists and psychiatrists.

*** includes personal observations and file auditing.

**** includes oral and written surveys.

N/A this did not form part of the work-stream in the particular country concerned.

1.5. The RVA project outputs

Project outputs include:

Trainings:

- Training to develop the capacity of various actors to address and ensure the specific support and procedural needs of vulnerable asylum-seekers, such as, state authority staff, NGOs, lawyers and health-care professionals;
- Regional training to develop the capacity of state authorities to address the special procedural needs of vulnerable asylum-seekers;
- Training of national authority staff (as trainers) from the central European authorities on the module on Interviewing Vulnerable Persons developed and provided by the European Asylum Support Office (EASO).¹² National training is to be rolled out in the first quarter of 2014.

Translations:

- Translation of selected extracts from UNHCR's report on credibility assessment in EU asylum systems;¹³
- Translation of the module on Interviewing Vulnerable Persons developed and provided by the European Asylum Support Office and uploaded onto the EASO's Asylum Curriculum Training Platform (Bulgarian, Hungarian, Polish, Romanian and Slovak).¹⁴

Reports:

- Summary and Final Reports to state authorities detailing findings of research, reviews and monitoring missions, including draft recommendations.

Guidance to state authorities:

- Guidance highlighting good practices in relation to vulnerable asylum-seekers;
- National guidance on developing methods to identify vulnerable asylum-seekers and to assess their specific support and procedural needs;
- Regional and national guidance on deciding asylum claims in relation to various categories of vulnerable asylum-seekers.¹⁵

¹² This is discussed further in chapter 5. For information on the EASO training programme see: <http://easo.europa.eu/about-us/tasks-of-easo/training-quality/>

¹³ UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report* (May 2013), and UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Summary* (May 2013). This is discussed further in chapter 5.

¹⁴ See (n.12).

¹⁵ This is discussed further in chapter 5.

1.6. The structure of this report

This report has a further 4 chapters. Chapter 2 provides an overview of current state practice and law in relation to vulnerable asylum-seekers in the participating RVA project states. Chapter 3 explores further the question of who may have specific support or procedural needs with reference to UNHCR, EC and other materials emanating from relevant projects. The ensuing chapter considers obligations in relation to establishing a method for identifying vulnerable asylum-seekers and for assessing their specific needs. Chapter 5 considers some of the steps taken within the framework of the RVA project to enhance the capacity of states to address the specific support and procedural needs of applicants. This report presents recommendations to states in relation to the definition of vulnerable asylum-seekers, their identification, and developing capacity to address specific needs.

Country background information

2.1. Introduction

Bulgaria, Hungary, Poland, Romania and Slovakia all have external European Union borders and as such serve as points of entry for asylum-seekers. The geographical position of these countries also means they act as a crossroads for asylum-seekers moving on to Western Europe. All of these central European states acceded to the 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees prior to their entry into the European Union.¹⁶ All of the countries are subject to the Common European Asylum System.

In relation to asylum-seekers, more generally, there are challenges in seeking to improve support provisions and ensuring that procedural guarantees are met. These challenges are heightened in the case of vulnerable asylum-seekers, more specifically, and are exacerbated in the face of competing demands to control migration and in light of the deteriorating global economic situation.

This chapter provides an overview of current state practice in relation to vulnerable asylum-seekers in all of the participating RVA project states.

2.2. Bulgaria

Background information on asylum

The State Agency for Refugees (SAR) within the Council of Ministers is responsible for determining applications for refugee status and subsidiary protection (referred to as humanitarian status in Bulgarian law). The Law on Asylum and Refugees (LAR) regulates most issues respectively.¹⁷ SAR also has adopted Internal Rules and Regulations for Conducting the Proceedings for Granting Protection.

SAR has a centralized structure, with the main office in Sofia. There are Registration and Reception¹⁸ facilities based in Sofia and Banya. There is also a Transit Centre¹⁹ in Pastrogor. In addition, four new

¹⁶ Hungary acceded to the Refugee Convention in 1989; Bulgaria, Poland and Romania acceded in 1992, and the Slovak Republic re-enacted its accession in 1993 following the split of the Czechoslovak Federation.

¹⁷ Law on Asylum and Refugees (Promulgated in the State Gazette No. 54 of 31 May 2002) (and amended) (hereinafter 'LAR').

¹⁸ A territorial division of SAR for the registration, accommodation, medical examination, social and medical support of asylum-seekers and for conducting the entire asylum procedure.

¹⁹ A territorial division of SAR for the registration, accommodation, medical examination of asylum-seekers and for conducting Dublin and accelerated procedures.

facilities to accommodate asylum-seekers have recently opened; namely, in Sofia (Voenna Rampa and Vrazhdebna), in Kovatchevtsi and in Harmanli (closed facility).²⁰

An application for asylum may be submitted in person at SAR. If an application is made through any other authority, it must be referred to SAR accordingly. Once an application is made, an applicant will be accommodated at one of SAR's above-mentioned facilities or residence at an external address may be permitted.

In each of the five preceding years, Bulgaria received on average 1000 asylum applications.²¹ This year there has been an increase in asylum numbers with 5232 asylum applications being recorded as at the end of October 2013.²² In 2012, the five main citizenships of asylum applications included Syria, Iraq, stateless applicants, Afghanistan and Algeria.²³ The main countries of origin thus far for 2013 are Syria, Algeria, Palestine and Iraq.²⁴

Definition of vulnerable applicants in Bulgarian law

According to LAR, vulnerable groups include children, pregnant women, the elderly, single parents accompanied by children, disabled persons and those who have been subjected to serious forms of psychological, physical or sexual violence.²⁵ The law stipulates that the particular situation of applicants must be taken into account when applying the respective provisions.²⁶

Present support provisions for asylum-seekers

If accommodated in one of the above-mentioned facilities, asylum-seekers are entitled to food²⁷ and social assistance in line with Bulgarian nationals.²⁸ The monthly assistance granted currently stands at approximately 32.5 Euros per month. Social assistance is not available if an applicant is not accommodated in one of SAR's facilities.²⁹

According to the law, accommodation must be provided to asylum-seekers following an assessment of their health condition, marital status and financial situation.³⁰ In practice, the lack of appropriate and available accommodation limits the extent to which needs are taken into consideration.

²⁰ These new facilities to accommodate asylum-seekers are not territorial divisions of SAR where both accommodation and processing of an asylum claim takes place; the centres have been opened to facilitate accommodation only.

²¹ UNHCR RRCE, Asylum Trends 2007-2009, Provisional statistical figures for central Europe; and UNHCR RRCE, Asylum Trends 2010-2012, Provisional statistical figures for central Europe.

²² Government figures.

²³ EUROSTAT, Asylum applicants and first instance decisions on asylum applications: 2012 (May 2013) (p. 8, Table 5).

²⁴ Government data. See also: Eurostat, Asylum applicants and first instance decisions on asylum applications, First Quarter, 2013 (Issue: 09/2013) (p.8, Table 5), and Eurostat, Second Quarter, 2013 (Issue: 12/2013) (p.8, Table 5).

²⁵ LAR, Article 30a.

²⁶ LAR, Article 30a.

²⁷ LAR, Article 29(1)2.

²⁸ LAR, Article 29(1)3.

²⁹ LAR, Article 29(6).

³⁰ LAR, Article 29(4).

Asylum-seekers are entitled to health care throughout the duration of the asylum procedure, including during the appeal stages, in line with that available to Bulgarian nationals.³¹ Health insurance in Bulgaria however only covers basic services and pays for a limited number of medicines as indicated on a pre-determined list.³² There is a one-off payment of social assistance that may be payable, which stands at approximately 160 Euros.³³ As with Bulgarian nationals, asylum-seekers must complete a form for assessment and payment may be granted to meet medical, educational, accommodation and other essential needs.

Under LAR, all asylum-seekers have a right to psychological assistance.³⁴ There is however only one psychologist available at SAR and hence limited provision. Some NGOs provide psychological assistance within the framework of project-based funding.

According to LAR, unaccompanied asylum-seeking children (UASC) should be accommodated with relatives, with a foster family, at a specialized institution or at another place of accommodation which has special facilities for children.³⁵ In practice, UASC are accommodated at SAR facilities, sometimes together with unrelated adults. The law envisages that potential foreign victims of trafficking may also benefit from accommodation and care within a safe environment.³⁶ A National Referral Mechanism operates which mandates coordination between the various persons involved in the identification and care of trafficking victims.³⁷

Specific procedural guarantees

LAR stipulates that unaccompanied children must be appointed a guardian, in accordance with the procedure specified in the Family Code.³⁸ Under the Family Code, the municipal mayor of the area where a child lives has the responsibility to appoint a guardian. However, the procedure for appointing a guardian does not operate well in practice. Moreover, it is not explicitly stated in the Family Code that a guardian should be appointed for UASC.

According to the asylum law, in the absence of the appointment of a guardian for a UASC, the child shall be represented during the asylum procedure by the Agency for Social Assistance, Department of Child Protection.³⁹ However, according to the law on child protection, social workers have a distinct role to play separate from that of guardians⁴⁰ and both should be present during the hearing of the child. Consequently, the presence of a social worker during the procedure is not a substitute for a guardian.

³¹ LAR, Article 29(1)4.

³² Law on Health Insurance (Promulgated in the State Gazette No. 70 of 19 June 1998) (and amended), s. VI.

³³ Regulations on the Application of the Law on Social Assistance, Article 16 (1).

³⁴ LAR, Article 29(1)5.

³⁵ LAR, Article 29(7).

³⁶ Law on Combating Trafficking in Human Beings (2003).

³⁷ See National Mechanism for referral and support of trafficked victims in Bulgaria (2010) p. 50 – <http://lastradainternational.org/Isidocs/Bulgarian%20NRM.pdf>

³⁸ LAR, Article 25(1).

³⁹ LAR, Article 25(5).

⁴⁰ Law on Child Protection (2000) Article 15 (4) and (5).

The UASCs representative (guardian or social worker) has the right to ask questions and raise any concerns at the asylum interview.⁴¹ The accelerated asylum procedure is not applied in relation to unaccompanied children.⁴² Where an age dispute arises, the applicant will be sent for an age assessment.⁴³

Asylum-seekers with mental health needs, who do not have the capacity to represent themselves, will not undergo a personal asylum interview.⁴⁴ In cases of doubt, psychiatric opinion will be sought.⁴⁵ SAR also has the authority to request the court to limit the legal capacity of such asylum-seekers to act on their own behalf.⁴⁶

Other procedural guarantees include a preference for a same-sex interviewer or interpreter, upon request.⁴⁷ An asylum interview may be suspended if at the time there are medical or psychological grounds for doing so.

Identifying vulnerable applicants and assessing their needs

There is no method for the identification of vulnerable applicants and for a comprehensive assessment of their specific support or procedural needs. However, all applicants must undertake a medical examination to identify any contagious diseases and this may alert the authorities to any health needs which may have to be addressed by a General Practitioner or at a local hospital.⁴⁸ Since October 2012, SAR has adopted the use of a questionnaire for the early identification of asylum-seekers having suffered traumatic experiences (PROTECT).⁴⁹ Currently the PROTECT questionnaire is only being applied to a pre-selected group of applicants and only at the Registration Reception Centre (RRC) in Sofia. All applicants surveyed are asked if they want to be referred to a psychologist. As noted above, there is only one SAR psychologist who also has responsibility for completing the questionnaire. There is however an Assistance Centre for Torture Survivors, an NGO based in Sofia where referrals could be made. As the use of the PROTECT questionnaire is still very much in its infancy, such referrals are yet to become commonplace.

2.3. Hungary

Background information

The Office of Immigration and Nationality (OIN) within the Ministry of Interior is the government institution responsible for determining applications for refugee status and subsidiary protection. Legislation enacted in 2007 (as amended) regulates the law on immigration and asylum.⁵⁰ The OIN is a centralized government authority; the director general supervises seven regional directorates and the open and closed reception facilities.

⁴¹ LAR, Article 63a(9).

⁴² LAR, Article 71(1).

⁴³ LAR, Article 61(3).

⁴⁴ LAR, Article 63a(5).

⁴⁵ LAR, Article 61(4).

⁴⁶ LAR, Article 27.

⁴⁷ LAR, Article 63a(4).

⁴⁸ LAR, Article 29(4).

⁴⁹ The PROTECT questionnaire is discussed in chapter 4 (4.3).

⁵⁰ Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement, Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, and Act LXXX of 2007 on Asylum and the Government Decree 301/2007 (XI. 9).

The statistical picture for Hungary for the years of 2008 – 2012 reveals that asylum applications usually range from between 2000 to 5000, with a peak of 4672 applications in 2009⁵¹ and 2155 claims lodged in 2012.⁵² This year there has been an increase in asylum numbers with more than 16,000 asylum applications being recorded as at the end of October 2013.⁵³ In January 2013, changes in detention policy entered into force, prohibiting the detention of asylum-seekers and this has reportedly been recorded as a basis for the increase in numbers. However, on 1 July 2013 new amendments to asylum legislation once again allows for the detention of asylum-seekers.⁵⁴ In 2012, the five main citizenships of asylum applications included Afghanistan, Pakistan, Kosovo, Syria and Morocco.⁵⁵ The main countries of origin thus far for 2013 are Kosovo, Pakistan, Algeria, Afghanistan and Syria.⁵⁶

There are two transit centres located in Békéscsaba and in Kiskunhalas, two open reception centres located in Debrecen and Bicske and a temporary reception centre in Vámoszabadi. There are also detention facilities located in Debrecen, Nyírbátor, Győr and at Budapest Airport. There are also children's homes in Fót and in Hódmezővásárhely. An OIN Open Community Shelter (in Balassagyarmat) has been operational this year to house the increased number of asylum-seekers.

An asylum application may be made to the police, at the Refugee Authority (OIN) and at any government authority which must refer the applicant accordingly.

Definition of vulnerable applicants in Hungarian law

According to the law, persons requiring special treatment because of their individual situation include children, unaccompanied children, the elderly or disabled, pregnant women, single parents accompanied by children, and those who have been subjected to serious forms of psychological, physical or sexual violence.⁵⁷ Broadly speaking, the Act on Asylum envisages preferential treatment for those with special needs.⁵⁸

Present support provisions for asylum-seekers

The OIN is responsible for the accommodation of asylum-seekers (at transit, open reception, or detention centres) and for the support provided. Accommodated asylum-seekers receive three meals a day or food allowance in equivalent value, toiletries, clothing, a monthly allowance, a travel allowance and school education.⁵⁹ It is a requirement for the OIN to ensure separate accommodation within reception centres for persons with special needs in accordance with their individual situation.

At the respective facilities, there are medical services, on-site social workers or assistants, and visiting psychologists from a national NGO; namely, the Cordelia Foundation for the Rehabilitation of Torture Victims.

⁵¹ UNHCR Asylum Trends (2007-2009) (n. 21).

⁵² UNHCR Asylum Trends (2010-2012) (n. 21).

⁵³ Government figures. See also: Eurostat, First and Second Quarters (2013) (n.24).

⁵⁴ Act LXXX of 2007 (as amended) s 31/A.

⁵⁵ EUROSTAT (2012) (n. 23).

⁵⁶ Eurostat, First and Second Quarters (2013) (n. 24).

⁵⁷ Act II of 2007, s 2(t), and Act LXXX of 2007, s 2(k).

⁵⁸ Act LXXX of 2007 on Asylum.

⁵⁹ Government Decree 301/2007 (XI.9), s 15.

Applicants are eligible for free health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment, as required. All applicants will undergo a medical examination conducted on public health grounds.⁶⁰

It ought to be noted however that the available accommodation provisions and services are not designed to facilitate the higher than usual numbers of asylum-seekers, as received in 2013. Further, although the treatments available for asylum-seekers qualify as basic services,⁶¹ these are largely provided by NGOs⁶² and covered by external funds, such as the European Refugee Fund matched by government funds.

In relation to unaccompanied children, they are accommodated, as noted, in the Károlyi István Children's Home in Fót and in the church-run home in Hódmezővásárhely. The OIN must request the Guardianship Agency (a department of local government) to appoint a case guardian to represent the child, unless the asylum-seeker is likely to become an adult before the OIN take a decision on the asylum application.⁶³ The Guardianship Agency also appoints a temporary guardian to represent the child in any official procedure in addition to the asylum procedure.⁶⁴ The appointment of a temporary guardian should happen within a prescribed 3 day period,⁶⁵ but in practice this may take longer. As of 1 January 2014 a Child Protection Guardian will take over the role of a temporary guardian.⁶⁶ Where age is disputed, the applicant will be referred for an age assessment. There is however no standard procedure relating to age assessment or an appeal against the decision.

Specific procedural guarantees

A Standard Operation Procedure on victims of Sexual and Gender-based Violence (SGBV) was introduced in 2011 for two OIN open reception centres (Bicske and Debrecen). It was produced by the OIN in collaboration with UNHCR and civil society organizations. The guidance defines relevant principles, guidelines, the responsibility of the various actors (UNHCR, the Immigration Office, doctors, psychologists, and police officers), and establishes a protocol on cooperation.

A child or a person with mental incapacity will be interviewed in the presence of his/her legal representative or guardian.⁶⁷ In the case of a legal representative or guardian not attending the personal interview, the law stipulates that a new date will be set.⁶⁸

Other procedural guarantees include a preference for a specific sex interpreter, if this does not hinder the completion of the asylum procedure.⁶⁹ A personal interview will be postponed if the person seeking

⁶⁰ In accordance with the Reception Conditions Directive (2003), Art 9 [as transposed by the Govt. Decree 301/2007 (XI. 9), s 15 and s 26.

⁶¹ Act LXXX of 2007 s 4 (3).

⁶² The NGOs representing asylum-seekers are the Hungarian Helsinki Committee, the Cordelia Foundation for the Rehabilitation of Torture Victims, and the Menedék Association for Migrants.

⁶³ Act LXXX of 2007 s 35.

⁶⁴ Govt. Decree 301/2007 s 62 (9).

⁶⁵ Act XXXI of 1997.

⁶⁶ Act XXXI of 1997 s 11.

⁶⁷ Govt. Decree 301/2007 s 74 (1).

⁶⁸ Govt. Decree 301/2007 s 76 (2) & (3). If a legal representative does not attend a personal interview despite of being notified repeatedly, the refugee authority shall be obliged to provide for the appointment of an ad-hoc guardian.

⁶⁹ Govt. Decree 301/2007 s 66 (2).

recognition is not fit to be interviewed. In case of doubt, the refugee authority shall seek the opinion of a doctor or psychologist.⁷⁰

Identifying vulnerable applicants and assessing their needs

Whilst national legislation confers an obligation on the asylum authority to assess whether the provisions applicable to persons requiring special treatment should apply, there remain some challenges in practice to identify specific support or procedural needs at an early stage or throughout the asylum procedure. The Migration Strategy of the Hungarian Government (2014-2020) however includes the state's commitment to establish a method to identify special needs and vulnerability factors at an early stage.⁷¹

2.4. Poland

Background information

The Office for Foreigners (OFF) was established in 2001⁷² and is responsible for determining applications for refugee status and subsidiary protection.⁷³ The OFF is a central administration agency and comes under the supervision of the Minister of Interior.

The OFF has a centralized structure with offices in Warsaw and a branch office in Biała Podlaska. There are two reception and accommodation centres located in Biała Podlaska and Dębak (near Warsaw) respectively,⁷⁴ and ten open accommodation centres (Bezwola, Białystok, Czerowny Bór, Grotniki, Grupa koło Grudziądza, Kolonia Horbów, Linin, Lublin, Łuków and Targówek). The majority of the accommodation centres are close to the Eastern border.

The first legislation relating to migration and asylum was enacted in 1997.⁷⁵ In 2003, the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland came into force.⁷⁶ It regulates reception conditions and procedural guarantees for asylum-seekers in Poland.

Applications for asylum have to be lodged through the Border Guard at the port of entry or in-country (at one of the offices in Warsaw). The statistical picture for Poland for the years of 2008 – 2012 reveals that asylum applications ranged from 6,500 to around 10,000 applications per year.⁷⁷ In 2012, 10,671 applications were lodged.⁷⁸ 2013 has seen an increase in number with more than 14,400 applications being lodged as at the end of October.⁷⁹ The majority of applications are made at the land border crossing point with Belarus in Terespol. In 2012, the five main citizenships of asylum applications included

⁷⁰ Govt. Decree 301/2007 Section 77.

⁷¹ Government Regulation (1698/2013) (X.4).

⁷² Prior to 2007 the Office for Foreigners was called the Office for Foreigners and Repatriation.

⁷³ For information see: <http://www.udsc.gov.pl/index.php?documentName=main>

⁷⁴ These operate as transit facilities and applicants are subsequently transferred to an accommodation centre.

⁷⁵ The Act on Foreigners, Journal of Laws (1997) No 114, item 739 (with amendments).

⁷⁶ Journal of Laws of 2003, No 128, item 1176 (with amendments). There are also regulations (secondary legislation) issued by the Minister of Interior.

⁷⁷ UNHCR Asylum Trends (2007-2009) and (2010 – 2012) (n. 21).

⁷⁸ Ibid.

⁷⁹ Government figures. Asylum Statistics are available on the OFF's web-page: <http://www.udsc.gov.pl/Statistics,275.html>

Russia, Georgia, Armenia, Kazakhstan and Syria.⁸⁰ The top main countries of origin for the first two quarters of 2013 stand at the same and in order are Russia, Georgia, Syria, Armenia and Kazakhstan.⁸¹

Definition of vulnerable applicants in Polish law

There is no definition of vulnerability in the Act on Granting Protection. However, under chapter 4 of the Act, additional procedural rights are guaranteed for asylum-seekers with special needs. The Act lists three groups of vulnerable asylum-seekers:

- Unaccompanied children (articles 61-67)
- Disabled persons (articles 68-69)
- Victims of violence (articles 68-69)

The Act on Granting Protection neither provides a definition in terms of the above-listed categories nor does it define vulnerability or the expression 'special need'.

Present support provisions for asylum-seekers

The OFF is responsible for providing accommodation and financial support to all asylum-seekers upon their arrival. Applicants are admitted into one of the abovementioned reception facilities and then transferred to an accommodation centre. Alternatively, they may be provided with financial support to live outside of an accommodation centre pending the determination of refugee status determination proceedings.⁸² The financial support, among other reasons, is provided to guarantee safety to the asylum-seeker concerned, in particular, taking into account the situation of single mothers.⁸³ There are no specific provisions on accommodating vulnerable asylum-seekers. However, the accommodation centre in Warsaw-Targówek, which opened in 2010, accommodates single women and mothers.

Asylum-seekers are entitled to medical assistance.⁸⁴ Medical assistance (within the reception and accommodation centres) is financed from the OFF's budget, but is provided by a private contractor. A doctor and a nurse must be situated in each reception and accommodation centre. The private contractor also provides psychological assistance to asylum-seekers and this is available in reception and accommodation centres.

Special treatment is provided in various hospitals. The health care services provided to applicants are the same as those guaranteed to citizens and individuals with health insurance. The health care services include therapy, prevention and treatment provided by physicians (primary health care) and specialists (secondary health care) as well as access to a hospital and ambulance services.⁸⁵

⁸⁰ Eurostat (2012) (n. 23).

⁸¹ Eurostat, First and Second Quarters (2013) (n. 24).

⁸² Act on Granting Protection, Article 71(1)(2).

⁸³ Act on Granting Protection, Article 72(1)(1).

⁸⁴ Act on Granting Protection, Article 70(1).

⁸⁵ Act on Granting Protection, Article 73(1).

Specific procedural guarantees

There are specific procedures for victims of violence and disabled persons. A medical examination or a psychological evaluation is carried out by the OFF if an applicant, in his/her application form for refugee status states that s/he is disabled or is a victim of violence or if his/her mental or psychical condition shows s/he might have been a victim of violence. If a medical examination or psychological evaluation confirms that the applicant 'was the subject of violence or is disabled' an interview is conducted in an applicant-friendly environment in the presence of a psychologist.⁸⁶

There are also procedural guarantees for unaccompanied children. A guardian is appointed immediately after a claim for asylum is lodged and a child is placed in a foster family or foster centre. Only designated case workers may determine a claim lodged by a UASC and an interview has to be conducted in the presence of a guardian, a person indicated by the child, and a psychologist or pedagogue.⁸⁷

The OFF in cooperation with the Minister of Interior and UNHCR, has developed a standard operating procedure relating to victims of trafficking which should be in force from 2014. The procedure provides case workers with information and tools to react if an applicant is a potential victim of trafficking. Moreover, a special coordinator on trafficking in human beings will be appointed in the Department of Asylum Proceedings in the OFF and case workers may refer to him/her with any questions. This is an important step towards guaranteeing the proper identification of and assistance for victims of trafficking; albeit limited to activities carried out in the Department of Asylum Proceedings.

Identifying vulnerable applicants and assessing their needs

Whilst the OFF is responsible for taking into account the special needs of certain categories of vulnerable asylum-seekers, as defined above, there is no obligation to identify and assess the specific needs of asylum-seekers for the purpose of providing appropriate support or procedural guarantees. The exception to this, as noted above, is where an applicant declares a disability or that s/he has been a victim of violence in which case a medical examination will be undertaken and specific guarantees implemented. The NGO capacity in Poland to assess and assist in addressing the specific support or procedural needs of applicants is quite limited. Cooperation between the OFF and civil society in this regard could be further developed.

⁸⁶ Act on Granting Protection, Article 68.

⁸⁷ Act on Granting Protection, Article 65.

2.5. Romania

Background information

The national asylum authority in Romania is the Directorate for Asylum and Integration (DAI) within the General Inspectorate for Immigration (GII),⁸⁸ and is the body responsible, *inter alia*, for registration of asylum applications, processing and determining of asylum claims at administrative level, issuing documents and prolonging their validity. The asylum process is governed by the provisions of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the Law on Asylum of 2006 (as amended and supplemented),⁸⁹ the Civil Procedure Code, and the applicable provisions of the Government Emergency Ordinance regarding the regime of aliens in Romania.⁹⁰

DAI has a regionalized structure with six regional centres for accommodation and asylum procedures located in Bucharest, Galati, Radauti, Somcuta Mare, Timisoara and Giurgiu. The Regional Centres are managed by GII DAI.

The statistical picture for Romania for the years of 2008 – 2012 reveals that asylum applications ranged from around 1000 to just over 2500 applications per year, with 2511 applications being lodged in 2012.⁹¹ 2013 has seen 1319 applications being submitted as at the end of October.⁹² In 2012, the five main citizenships of asylum applications were Algeria, Morocco, Pakistan, Syria and Afghanistan.⁹³ The top main countries of origin for the 2013 are Syria, Iraq, and Pakistan.⁹⁴

Asylum applications may be lodged at one of the six DAI Regional Centres for accommodation and asylum procedures, the Border Police units, Romanian Police Units,⁹⁵ or units of the National Administration of Penitentiaries subordinate to the Ministry of Justice. The asylum procedure is carried out by staff at the territorially-competent Reception Centre under the responsibility of GII DAI.

If an applicant lodges an asylum claim at a border crossing point, the rules for border procedures apply as provided for by the Asylum law. During the border procedure, asylum-seekers may be confined in a transit zone for a maximum period of 20 days, thereafter the asylum-seekers are granted access to Romanian territory, irrespective of the stage of the refugee status determination procedure, and are referred to one of the six accommodation centres.⁹⁶

⁸⁸ The General Inspectorate for Immigration is a body within the Ministry of Internal Affairs.

⁸⁹ Asylum Law (no. 122/2006), (4 May 2006). This law transposes the relevant EU Directives and Regulations.

⁹⁰ Government Emergency Ordinance (GEO) (no. 194/2002) (as amended and supplemented).

⁹¹ UNHCR Asylum Trends (2007-2009) and (2010 – 2012) (n. 21).

⁹² Government statistics.

⁹³ Eurostat (2012) (n. 23).

⁹⁴ Government data. See also Eurostat, First and Second Quarters (2013) (n.24).

⁹⁵ Aliens apprehended by the border police on the land border after entering Romania illegally are registered as asylum-seekers should they apply for asylum and are then transferred to an open reception centre under the responsibility of GII.

⁹⁶ The practice of the last years shows that most of the asylum-seekers applying at border crossing points were granted access to the ordinary procedure and to the territory.

Definition of vulnerable applicants in Romanian law

The 2011 modifications to the Aliens law introduced a description of ‘vulnerable persons’ encompassing, ‘children, unaccompanied children, persons with disabilities, elderly persons, pregnant women, single parent families with children, victims of torture, rape and other serious forms of physical, emotional or sexual violence.’⁹⁷

However, the national Asylum law does not contain a similar provision and does not regulate the concept of ‘vulnerability’. The Asylum law refers instead to ‘persons with special needs’, but the meaning is not defined.⁹⁸ Vulnerable persons should be identified following ‘an evaluation by specialized GII staff’,⁹⁹ and should benefit from ‘adapted accommodation conditions and assistance in Reception Centres’,¹⁰⁰ as well as adequate medical care¹⁰¹ and psychological assistance provided by professional GII staff.¹⁰²

Present support provisions for asylum-seekers

The Asylum law 2006 confers primary responsibility with DAI¹⁰³ for providing accommodation and support to asylum-seekers who do not have the financial means to support themselves.¹⁰⁴ At the accommodation centres asylum-seekers are entitled to a financial allowance granted by the government and a range of counselling and support services provided upon request by NGOs.

Asylum-seekers are not insured by the public health care system. Medical care covers emergency treatment and acute or chronic illnesses that put lives in immediate danger.¹⁰⁵ Such services are provided in public hospitals or within an accommodation centre if qualified medical personnel are available and are covered by the Ministry of Interior’s budget.

All applicants have an obligation to undergo a medical examination established for them, and this examination is only provided on public health grounds.¹⁰⁶

Specific procedural guarantees

There are no separate procedures for vulnerable persons and thus claims submitted by asylum-seekers with special needs can be processed in ordinary, accelerated or border procedures, with the exception of UASC who are exempt from the latter two processes. Specific procedural guarantees are ensured

⁹⁷ Aliens Law (GEO. No. 194/2002) Art. 2(z).

⁹⁸ The draft proposal for modification of the Asylum Law, to be adopted by the end of December 2013, includes an Article referring to ‘groups of persons with special needs’, and cites the same categories of vulnerable asylum-seekers as in the recast Reception Conditions Directive (2013), with the exception of ‘persons with serious illnesses’. The definition of vulnerable asylum-seekers adopted under the recast Reception Conditions Directive is discussed in chapter 3.

⁹⁹ Methodological Norms for the implementation of the Asylum Law (G.D. no. 1251/2006) Article 5 (1).

¹⁰⁰ Asylum Law (122/2006) (as amended) Article 17(1)(l).

¹⁰¹ Asylum Law (122/2006) (as amended) Article 1(1)(n).

¹⁰² Methodological Norms for the implementation of the Asylum Law (G.D. no. 1251/2006) Article 5(2).

¹⁰³ At the time it was the National Office for Refugees.

¹⁰⁴ Asylum Law (122/2006) (as amended) Article 17(1)(k).

¹⁰⁵ Asylum Law (2006) (as amended) Article 17(1)(m).

¹⁰⁶ Methodological Norms for the implementation of the Asylum Law (G.D. 1251/2006) Article 8 and the Asylum Law, Article 19(h).

for unaccompanied and separated children, and medico-legal examinations are carried out in cases where there are serious doubts as to the declared age. In the determination of cases regarding UASC, the case officers must take into account the intellectual development and maturity of the child, but a best interest determination procedure (BID) is not carried out. During the asylum procedure, unaccompanied children are appointed a legal guardian from the Child Protection Directorate. Children below the age of 16 are accommodated in a child protection facility, whilst those over the age of 16 may choose to stay in a reception centre or be placed in a facility of the Directorate for Child Protection.

The Asylum law also includes special provisions for conducting a procedure for persons who following a medico-legal examination are found to be lacking legal capacity to consent, such persons should be appointed a legal representative ¹⁰⁷

Identifying vulnerable applicants and assessing their needs

One of the main gaps in relation to the assistance of vulnerable persons is the absence of a method for their early identification by the national asylum authority or in partnership with any of the existing NGOs. At national level, there is only a mechanism in place for the identification and referral of victims of trafficking;¹⁰⁸ however, there is no information available regarding its application to asylum-seekers.

Insufficient medical services and staff numbers hinder the process of identifying persons who may have particular health care needs. On the other hand, asylum-seekers suffering from certain chronic diseases, such as tuberculosis, HIV or diabetes, which may be identified at any stage of the asylum procedure, are included in the relevant National Health Programmes funded by the state.

2.6. Slovakia

Background information

The Migration Office of the Ministry of the Interior is the agency responsible for determining applications for refugee status and subsidiary protection in the Slovak Republic. The Procedural Department of the Migration Office is directly responsible for first instance asylum proceedings, and is also in charge of the management of the asylum facilities on the Slovak territory. Aside from a reception facility in Humenné, there are also reception centres at Bratislava, Kosice, and Poprad international airports. There are also two accommodation centres in Opatovská Nová Ves and Rohovce respectively.

The Slovak asylum system is regulated by the Asylum Act 2002,¹⁰⁹ which replaced the earlier 1995 Refugees Act. Since it came into effect on 1 January 2003, the Asylum Act has been amended on 9 occasions.

¹⁰⁷ Asylum Law (122/2006) (as amended) Article 14.

¹⁰⁸ Order no. 335/2007, issued by the Ministry of Interior.

¹⁰⁹ Asylum Act 2002 (Act No. 480/2002 Coll.).

The recent amendments related to the transposition of EU legislation.¹¹⁰ The Asylum Act regulates, *inter alia*, the asylum and subsidiary protection procedure, the procedure for granting temporary shelter, the rights and obligations of asylum-seekers and beneficiaries of subsidiary protection, the scope and type of the available accommodation, and the services in the asylum facilities.

Applications for asylum may be lodged with one of the specified police departments.¹¹¹ Between the years 2008 and 2012, the Slovak Republic received between 500 and 900 applications per year.¹¹² In the first two quarters of 2013, 235 applications have been lodged.¹¹³ In 2012, the five main citizenships of asylum applications included Somalia, Afghanistan, Georgia, Congo and Armenia.¹¹⁴ The top main countries of origin for the first two quarters of 2013 are Somalia, Georgia, Eritrea, Afghanistan and Pakistan.¹¹⁵

Definition of vulnerable applicants in Slovak law

The Asylum Act does not contain an explicit definition of vulnerable persons. However, the Act requires the authorities to consider the personal circumstances of an asylum-seeker, including origin, sex and age, in both providing accommodation to an asylum-seeker and whilst examining the asylum application.¹¹⁶ A specific legislative definition of 'vulnerable persons' is included in the Act on Residence of Foreign Nationals.¹¹⁷ However, this definition is only applicable in the proceedings before the police and not in asylum proceedings.

Present support provisions for asylum-seekers

According to the Asylum Act, the Migration Office is the main body responsible for providing accommodation and support to asylum-seekers.¹¹⁸ Upon lodging an asylum application, asylum-seekers are accommodated in the reception centre in Humenné, where they undergo mandatory medical examinations.¹¹⁹ After approximately one month, they are accommodated in one of the two accommodation centres. The centre in Opatovská Nová Ves is specifically designed to accommodate vulnerable persons, such as women or families. The centre in Rohovce mainly accommodates single men. The Migration Office may permit asylum-seekers to live outside the accommodation centre under the condition that they have sufficient financial means to support their stay either alone, through another Slovak citizen, or through a foreign national with residence in Slovakia.

The Migration Office has an obligation to create suitable conditions for the accommodation and care of unaccompanied children, families with children and persons in need of special care. When

¹¹⁰ The most recent legislative proposal relating to the transposition of the 2011 Qualification Directive is currently being discussed in the Parliament. It is envisaged that the law will become effective as of 1 January 2014.

¹¹¹ It is anticipated that as of 1 January 2014, the number of the responsible police departments will increase as all police departments at the external border will be entitled to receive the asylum applications; as of today's date this amendment to the law has not officially been adopted.

¹¹² UNHCR Asylum Trends (2007-2009) and (2010 – 2012) (n. 21).

¹¹³ Eurostat (2012), First and Second Quarters, (2013) (n. 24).

¹¹⁴ Eurostat (2012) (n. 23).

¹¹⁵ Eurostat (2012), First and Second Quarters, 2013 (n. 24).

¹¹⁶ Asylum Act, Articles 19 and 39.

¹¹⁷ Act on Residence of Foreign Nationals 2011 (Act No. 404/2011 Coll.) Article 2(7): 'A vulnerable person is a minor, a person with disability, a person older than 65 years of age, a pregnant woman, a single parent with a minor child, and a person who was subjected to torture, rape or other serious forms of psychological, physical or sexual violence. In justified circumstances, a person younger than 65 may also be considered as an "older person".'

¹¹⁸ Asylum Act, Articles 1, 2.

¹¹⁹ Asylum Act, Article 23(3).

providing accommodation, the Asylum Act obliges the Migration Office to consider age, state of health, family relations, religious, ethnic or national specificities. Separate accommodation of men and women, children and adults (other than family members) is required. According to the legislation, transfers between the centres may take place only where necessary.¹²⁰

Unaccompanied asylum-seeking children who reach the Slovak territory are placed in the children's home specifically designed to accommodate foreign unaccompanied children who are on the Slovak territory. According to the current legislation, as soon as children apply for asylum, they must be transferred to an asylum centre, where they are required to stay throughout the duration of the asylum proceedings.¹²¹

Asylum-seekers, as a group, are not covered by the public health insurance scheme. The Migration Office directly pays for their urgent health care. In special circumstances it also covers health care necessitated by the individual's state of health and special needs, which may be identified at the medical examination.

The Migration Office covers suitable health care for unaccompanied children who are victims of abuse, neglect, exploitation, torture, cruel, inhuman, or degrading treatment, or if they have suffered as a result of armed conflict.¹²² The legislation does not provide more detailed guidelines as to the type of treatment covered; these are determined on a case-by-case basis.

Specific procedural guarantees

During asylum interviews and when examining the asylum applications, decision makers are required to consider the status and personal circumstances of an applicant, including his or her origin, gender and age.¹²³ The Asylum Act does not provide specific procedural safeguards to specified vulnerable groups, with the exception of unaccompanied children. In the case of an unaccompanied asylum-seeking child, the appointment of a guardian, who shall be present at interview and have sufficient time to prepare the child for the interview, is required. Furthermore, the decision maker is required to be knowledgeable and considerate of the special needs of unaccompanied children. In addition, such asylum application may not be rejected as being manifestly ill-founded.¹²⁴

Identifying vulnerable applicants and assessing their needs

The Asylum Act does not establish a separate official procedure for the identification of vulnerable asylum applicants or for an assessment of their needs. An age assessment will be undertaken for unaccompanied children where age is doubted. The Migration Office is responsible for taking into account the special circumstances of asylum-seekers, however, there is no specific legal obligation for the Migration Office to carry out an individualized process or evaluation in order to identify the specific needs of vulnerable asylum-seekers. In practice, specific needs are identified and assessed by individual staff members of the Migration Office on a case-by-case basis.

¹²⁰ Asylum Act, Article 39.

¹²¹ Asylum Act, Article 3.

¹²² Asylum Act, Article 22(5).

¹²³ Asylum Act, Articles 6 and 19.

¹²⁴ Asylum Act, Articles 3(1), 6(5), 6(6), 12(4), 16(2), 19.

2.7. The United Kingdom

Background information

In the UK, the Home Office is responsible for receiving asylum applications. The Home Office is the Ministerial Department of the UK Government responsible for immigration, passports, counter-terrorism, policing, drugs and crime.¹²⁵ In 2008, the United Kingdom Border Agency (UKBA) was established as an Executive Agency of the Home Office and was given the responsibility for determining applications for asylum (and other immigration applications). However, on 01 April 2013 the UKBA lost its Executive Agency status and its functions were returned to the Home Office.¹²⁶

Applications for asylum may be made at port of entry or in-country at the Asylum Screening Unit. In the last five years, the UK has received on average circa 26,000 applications per year with 10 per cent of applications being made at port and 90 per cent being made in-country.¹²⁷ The main source countries are Pakistan, Iran, Nigeria, Afghanistan and Sri Lanka.¹²⁸ The main source countries for the first two quarters are Pakistan, Iran, Sri Lanka and Syria.¹²⁹

The first primary legislation regulating asylum was the Asylum and Immigration Appeals Act 1993 and since there have been a number of other primary and secondary legislative measures. The UK asylum law is not consolidated. The UK has no automatic participation in the Common European Asylum System and must opt-in to measures in order for them to have effect. The UK has not opted-in to the recent recasts of the Reception Conditions Directive and the Asylum Procedures Directive (2013).

Vulnerable asylum-seekers and present support provisions

Asylum legislation enacted in 1999 confers primary responsibility for providing accommodation and support to asylum-seekers with the Home Office (at the time, the UKBA). In this regard, the National Asylum Support Service (NASS) became operational in 2000 as part of the UKBA.¹³⁰ NASS is responsible for providing accommodation and support for 'destitute' asylum-seekers who have claimed asylum as soon as 'reasonably practicable' after arrival. Applicants are admitted into emergency accommodation/induction centres (for about 2-3 weeks) and considered for dispersal to the North West, the Midlands, the North East, Wales or Scotland. When providing support, the Secretary of State for Immigration must take into account the special needs of vulnerable asylum-seekers defined as minors, disabled persons, elderly, pregnant women, single parents with children, or persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.¹³¹ There is however no obligation for the Secretary of State to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person's situation to determine whether he has special needs.¹³² There is

¹²⁵ For further information see – <https://www.gov.uk/government/organisations/home-office>

¹²⁶ The UKBA site may still be accessed for information relating to asylum in the UK: <http://www.ukba.homeoffice.gov.uk/>. However, over time content will be moved from the UKBA's website to the Government's digital service at www.gov.uk

¹²⁷ See Eurostats – http://epp.eurostat.ec.europa.eu/portal/page/portal/population/publications/migration_asylum

¹²⁸ Eurostat (2012) (n. 23).

¹²⁹ Eurostat, First and Second Quarters (2013) (n. 24).

¹³⁰ UKBA's website explains the services and support available: <http://www.ukba.homeoffice.gov.uk/asylum/support/>

¹³¹ The Asylum-seekers (Reception Conditions) Regulations 2005, s 4.

<http://www.legislation.gov.uk/uk/si/2005/7/made>. These Regulations transpose the EC Reception Conditions Directive 2003.

¹³² Ibid.

nonetheless an Asylum Support Partnership in the UK that consists of six agencies funded by the Home Office to deliver advice and other services to asylum-seekers in each region of the UK;¹³³ needs of vulnerable asylum-seekers *may* be assessed by one of the agencies.

Local authorities are local public administration bodies which are responsible for the main welfare system and have the responsibility for providing accommodation and support to anyone who has a 'care need', including to asylum-seekers. In this regard, an asylum-seeker that has been assessed by a local authority to have a 'care need' by reason of *age, illness, disability or any other circumstance* may be provided with accommodation and support by local authorities in accordance with his/her individual needs. The need for care and attention must not have arisen *solely as a result of destitution*.¹³⁴ Support for unaccompanied children is the responsibility of a Local Authority Social Services Department, regardless of a child's immigration status. Thus unaccompanied asylum-seeking children will receive local authority assistance.¹³⁵ The Social Services' duty of care includes assessing the needs of the unaccompanied child. There is a Framework for the Assessment of Children in Need and their Families.¹³⁶

The UK has a National Health System (NHS) and access to health services is available to anyone who is 'ordinarily resident' in the UK. Asylum-seekers are entitled to use NHS services without charge.

Procedural guarantees

In relation to procedures, there is a separate procedure for assessing the asylum claims of children,¹³⁷ and a mechanism in place to allow for the suspension of cases, subject to specific timeframes, if referred for a medico-legal report.¹³⁸ There is specific guidance for case workers in relation to gender-related persecution,¹³⁹ LGBTI,¹⁴⁰ and victims of torture.¹⁴¹ There is also stated policy in age assessment cases.¹⁴² Broadly speaking, Home Office guidance on asylum decision-making provides information on substantive law and procedural matters.

¹³³ For information on the partnership see: http://www.refugeecouncil.org.uk/what_we_do/working_with_partners/asp

¹³⁴ The National Assistance Act 1948, s 21 (as amended) - <http://www.legislation.gov.uk/ukpga/Geo6/11-12/29/contents>.

The UKBA Asylum Policy Bulletin (No 82) provides information on support for asylum-seekers who may have a need for support or care due to age, illness or disability - <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylum-supportbulletins/general/pb82?view=Binary>

¹³⁵ The Children Act 1989, s 17, s 20 - <http://www.legislation.gov.uk/ukpga/1989/41>

¹³⁶ The Framework may be accessed at: <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DH-4014430>

¹³⁷ UK Border Agency Asylum Process Guidance for 'Special Cases': - Processing Child Claims:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/>

¹³⁸ The guidance is available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/guidance/medico-legal.pdf?view=Binary>

¹³⁹ Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/gender-issue-in-the-asylum.pdf?view=Binary>

¹⁴⁰ Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/sexual-orientation-gender-ident?view=Binary>

¹⁴¹ *Ibid.* (n. 138).

¹⁴² The policy is available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary>

2.8. Conclusion

It can be seen that all states recognize in their national laws that certain categories of asylum-seekers (based on age, health, disability or psychological factors) may have specific needs, and this definition is generally consistent with Article 17 of the Reception Conditions Directive of 2003.¹⁴³ In broad terms, the states have varying levels of resources already in place to address specific support needs, such as medical staff, social workers or assistants, in-house psychologists or specialist NGOs who are able to offer services. Likewise, states also have varying procedural standards for vulnerable asylum-seekers. However, as has been noted above, what is a common feature of all state practice is that there is no method to identify those who may have specific support or procedural needs and to assess the level of those needs. In this regard, access to support services or the implementation of procedural guarantees may be compromised.

¹⁴³ See chapter 3 (3.2).



Defining vulnerable asylum-seekers

3.1. Introduction

In chapter 1 of this report, it is noted that within the asylum-seeking population there are those that may face specific difficulties and thus may require specific support needs and/or procedural safeguards. In this regard, reference to *categories* of asylum-seeker is often made. This chapter explores further the question of *who* may have specific support and/or procedural needs with reference to UNHCR, EC and other materials emanating from relevant projects.

3.2. Who is a vulnerable asylum-seeker?

i. UNHCR's RSD procedural standards

UNHCR's RSD Procedural Standards specify that applicants who may be 'vulnerable or have special needs' encompass,¹⁴⁴

- Persons manifestly in need of international protection;¹⁴⁵
- Victims of torture and persons suffering from trauma;
- Women with special needs (i.e. victims of sexual or domestic violence and women who may be at risk in the host country because of cultural, domestic, social, or economic conditions);
- Certain child applicants (under 18 years)/unaccompanied and separated children;
- Elderly asylum-seekers;
- Disabled asylum-seekers;
- Asylum-seekers who require medical assistance.

ii. A categories approach

The Reception Conditions Directive of 2003, adopted under the first phase of the Common European Asylum System, also applies a categories approach in defining vulnerability. Article 17 obliges Member States 'to take into account the specific situation of vulnerable persons *such as* minors, disabled persons, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious form of psychological, physical or sexual violence.'

¹⁴⁴ UNHCR, *RSD Procedural Standards for Refugee Status Determination under UNHCR's Mandate* (Unit 3.4) (3-22).

¹⁴⁵ 'Applicants who should be considered to be "manifestly in need of protection intervention" are persons who may be subject to immediate refoulement or arbitrary arrest or detention in the host country, or who may have other serious legal or protection needs.' UNHCR, *RSD Procedural Standards* (3.4.2) (3-23).

The recast of the Reception Conditions Directive adopted this year extends and elaborates on the categories:

‘Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.’ (Article 21)

The recast of the Asylum Procedures Directive adopted this year also highlights vulnerable groups recognizing that certain applicants may be in need of ‘special procedural guarantees’ due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.’¹⁴⁶

iii. The boundaries of a categories approach

It is important to remember that a *categories* approach is illustrative rather than definitive. In this regard, asylum-seekers who may not fall into one or more of the listed categories may still have specific support needs and/or require procedural guarantees. This may be the case for someone who has learning difficulties who may not necessarily categorize themselves as having a disability. Conversely, it ought further to be noted that persons who fall into one of the categories that is listed may not necessarily require specific assistance above and beyond that which should normally be available to all asylum-seekers. Further, some applicants may require specific support needs whilst not requiring any specific procedural guarantees, or vice versa. This may be the situation for a wheelchair user, for example, who will require appropriately adapted accommodation but may not require any specific assistance in relation to the asylum procedure.

iv. The Enhancing Vulnerable Asylum-seekers' Protection project

Throughout the duration of the RVA project, the findings emanating from other research projects have also been taken into account in framing research activities. The Enhancing Vulnerable Asylum-seekers' Protection project (EVASP),¹⁴⁷ also co-financed by the European Refugee Fund, was specifically launched on the basis of the 2007 European Commission Green Paper on the Future of the Common European Asylum System which, as aforementioned, emphasized the imperative to take account of the special needs of vulnerable people and noted the present inadequacies as regards provisions, definitions and procedures across the Member States.¹⁴⁸

Rather than considering specific categories of asylum-seekers, the EVASP work advances the position that vulnerability is a ‘complex and composite phenomenon of various “external” and “internal” dimensions.’¹⁴⁹ The various ‘dimensions’ includes a number of ‘constituent categories’. The ten dimensions that emerged as the most relevant are: external circumstances, family constellation,

¹⁴⁶ APD (2013) (Preamble, para 29).

¹⁴⁷ For details of the EVASP project see: <http://www.evasp.eu/>

¹⁴⁸ Chapter 1 (n.11).

¹⁴⁹ EVASP, *Transnational Report* (2009- 2010) p. 6.

physical health, psychological health, community connections, wider society connections, degree of difference, type of journey, legal position, and daily routine.

In recognizing that vulnerability may occur as a result of different dimensions, this may appear at odds with the *categories* approach advanced by UNHCR and by the European asylum Directives. However, it can be seen that there is an overlap in that EVASP identifies that persons who may be vulnerable include those with medical needs, disabilities, psychological difficulties, families, the young, the elderly and those who may have complex asylum claims (which encompass children, gender-related persecution and LGBTI cases).

However, EVASP goes a little further and highlights to service-providers that persons who may equally be vulnerable encompass:

- those whose physical safety may be compromised (this may be due to a person's sexual orientation or gender identity);
- those who have no community connections in the host country (this may encompass single men);
- those with learning difficulties or marked levels of illiteracy;
- those with a high degree of difference (this may encompass persons who are highly educated or poorly educated).

Whilst under the RVA project the focus has been on highlighting the categories of persons who may have specific needs, as illustrated by UNHCR and the recast European asylum Directives, it has nonetheless, as noted above, also been emphasized that the list of categories is not-exhaustive; in this regard, the EVASP findings provide support for this position.¹⁵⁰ In fact, support may also be located in UNHCR's definition of vulnerable asylum-seekers, which includes 'persons manifestly in need of international protection' encompassing those with 'legal or protection' needs.¹⁵¹

3.3. Conclusion

This chapter has explored the question of who is a vulnerable asylum-seeker and has noted that categories of asylum-seekers may have specific support needs and/or require special procedural guarantees. Whilst the European asylum Directives highlight that there are certain categories of asylum-seekers who may have specific needs, the categories approach is not exhaustive. Specific support or procedural needs may vary on a case-by-case basis. The following chapter discusses existing and new obligations in relation to identifying vulnerable asylum-seekers and assessing their level of need.

¹⁵⁰ EVASP is discussed further in chapter 4 (4.3).

¹⁵¹ UNHCR, *RSD Procedural Standards* (n. 144).



Identifying vulnerable asylum-seekers and assessing their level of need

4.1. Introduction

The European Commission in the paper on the future Common European Asylum System highlighted that inadequacies exist as regards the identification of vulnerable asylum-seekers.¹⁵² Subsequent studies have affirmed this and indicated that European states do not have in place a method to identify those with specific support needs and/or who may be in need of procedural guarantees.¹⁵³ The purpose of this chapter is to address existing and new state obligations in relation to identifying vulnerable asylum-seekers and assessing their needs. This chapter also addresses some of the main points that were highlighted during the RVA project on developing methods for the identification of vulnerable asylum-seekers.

4.2. The early and ongoing identification of vulnerable asylum-seekers

i. UNHCR's profiling and referral mechanism

UNHCR's Executive Committee has noted that 'special protection or assistance needs' should be recorded at registration.¹⁵⁴ Registration is in essence seen as a protection tool; UNHCR's *Agenda for Protection* notes that states should,

'... register and document female and male refugees and asylum-seekers on their territory on an individual basis as quickly as possible upon their arrival, in a manner which contributes to improving their security, **their access to essential services** and their freedom of movement.'¹⁵⁵

UNHCR's 'Refugee Protection and Mixed Migration: a 10- Point Plan of Action'¹⁵⁶ refers to a 'profiling and referral' mechanisms as 'a non-binding process that precedes any formal status determination procedures and aims to identify the needs of and differentiate between categories of arrivals as soon

¹⁵² EC Green Paper (n. 11).

¹⁵³ See, for example, the EVASP Project (n.147) and, in relation to victims of torture more specifically, see International Rehabilitation Council for Torture Victims (IRCT), *Recognizing Victims of Torture in National Asylum Procedures. a Comparative Overview of Early Identification of Victims and Their Access to Medico-Legal Reports in Asylum-Receiving Countries* (2013).

¹⁵⁴ UNHCR ExCom, *Conclusion No 91(LII) on Refugee Registration* (2002) (para (b)(vi)).

¹⁵⁵ UNHCR ExCom, *Agenda for Protection (A/Ac/96/965/Add.1)* (June 2002).

¹⁵⁶ UNHCR, *Refugee Protection and Mixed Migration: a 10-Point Plan of Action* (January 2007).

as possible after arrival. One of the elements involves ‘counselling and referring arrivals to the authorities or procedures that can best meet their needs and manage their cases’.

ii. The Reception Conditions and the Asylum Procedures Directives of 2013 (recasts)

The recasts of the European asylum Directives include provisions relating to the identification of vulnerable asylum-seekers and the assessment of their needs. The emphasis in both the recast to the Reception Conditions Directive and the Asylum Procedures Directive is not only on an *early* identification, but also *ongoing* identification. The developments within the second phase of the Common European Asylum System are intended to underline state obligations to identify vulnerable asylum-seekers and to provide a response to their needs.¹⁵⁷ This obligation is also to be found in the Reception Conditions Directive of 2003, which obliges states to ‘take into account the specific situation of vulnerable persons ... found to have special needs after an individual evaluation of their situation.’¹⁵⁸ The emphasis on the identification of vulnerable asylum-seekers in the second phase of the European instruments should now heighten state awareness.

Reception Conditions Directive of 2013 (recast)

Article 22

Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, **Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.**

This assessment shall be initiated **within a reasonable period of time after an application** for international protection is made and may be integrated into existing national procedures. Member States shall ensure that these special reception needs are also addressed, in accordance with the provisions of this Directive, **if they become apparent at a later stage in the asylum procedure.**

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs **throughout the duration of the asylum procedure** and shall provide for **appropriate monitoring** of their situation.

Asylum Procedures Directive of 2013 (recast)

Member States should endeavour to identify applicants in need of special procedural guarantees **before** a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection’ (Preamble - paragraph 29).

¹⁵⁷ EC Green Paper (n. 11).

¹⁵⁸ RCD (2003) Article 17(1),(2).

Article 24

Applicants in need of special procedural guarantees

1. Member States shall **assess within a reasonable period of time after an application for international protection is made** whether the applicant is an applicant in need of special procedural guarantees.

....

4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a **later stage** of the procedure, without necessarily restarting the procedure.

The benefits of early identification are self-evident; vulnerable asylum-seekers should have access to support services as soon as possible and their procedural needs should be addressed in order to ensure that they are not disadvantaged in putting forward their asylum claim. However, the importance of an ongoing mechanism to identify vulnerable asylum-seekers and assess their level of need cannot be over-stressed. UNHCR has highlighted some of the factors that may forego an early identification of vulnerable asylum-seekers:

‘It should be noted that for a number of reasons, including shame or lack of trust, asylum-seekers may be hesitant to disclose certain experiences immediately. This may be the case, amongst others, for persons who have suffered torture, rape or other forms of psychological, physical or sexual violence. UNHCR notes that later disclosure of such experiences should not be held against asylum-seekers, nor inhibit their access to any special support measures or necessary treatment.’¹⁵⁹

4.3. Existing tools for the identification of vulnerable asylum-seekers

Both the recast Reception Conditions Directive and the Asylum Procedures Directive include a provision which states that ‘the assessment referred to ... need not take the form of an administrative procedure’ (RCD, 2013 - Article 22(2)/ APD, 2013 – Article 24(2)). Notwithstanding, as there is an obligation to *assess* whether the applicant is an applicant with special reception needs or in need of special procedural guarantees, it is clear that this provision does not exempt Member States from the requirement to include a method to identify vulnerable asylum-seekers and to assess the level of their needs.

UNHCR has developed a *heightened risk assessment tool* (accompanied by a user guide). This tool provides a set of ‘risk indicators’ to help identify vulnerable asylum-seekers and address their specific needs and was *developed to enhance UNHCR’s effectiveness in identifying refugees at risk*.¹⁶⁰ In a similar

¹⁵⁹ UNHCR, *Comments on the European Commission’s recast proposal for the [Receptions] Directive* (2009) (p.11) / UNHCR, *Comments on the European Commission’s amended recast proposal for a [Receptions] Directive* (2012) (pp. 16-17).

¹⁶⁰ UNHCR, *Heightened Risk Identification Tool*, version 2 (June 2010); UNHCR, *Heightened Risk Identification Tool*, version 2 (User Guide) (June 2010).

vein, various other tools have been developed within the framework of previous projects concerned with the identification of vulnerable asylum-seekers.

i. PROTECT: Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment¹⁶¹

The PROTECT project involves six partner NGOs from Bulgaria, France, Germany, Hungary and the Netherlands. The aim of the project was to develop a process for the early recognition and orientation of torture victims or victims of serious forms of psychological, physical or sexual violence. The PROTECT questionnaire which focuses on the ‘signs and symptoms of the most common mental health problems such as Post-traumatic Stress Disorder (PTSD) and depression’ was introduced. The aim of the questionnaire is ‘to identify vulnerable asylum-seekers having suffered traumatic experiences.’¹⁶² The questionnaire is being implemented in selected European countries under phase two of the project which began in September 2012 (PROTECT-ABLE).

ii. ASPIS: The Asylum-Seekers’ Protection Indices

In chapter 3, the work of the EVASP protection was addressed in relation to defining vulnerable asylum-seekers and it was noted that EVASP advances the position that vulnerability is a ‘complex and composite phenomenon of various “external” and “internal” dimensions.’¹⁶³ On the basis of the research findings along with the feedback received and responding to the needs of those working with asylum-seekers to have a systematic way of ascertaining vulnerability, the EVASP project developed the Asylum-seekers’ Protection Indices (ASPIS) tool. This tool encompasses ‘all of the lines of concern of all the identified dimensions of vulnerability on one page for easy reference’, and ‘aims to offer a systematic framework’ to indicate vulnerabilities.¹⁶⁴

4.4. Developing national identification methods

Under the RVA project, a uniform approach has not been adopted to advise states of one particular method for identifying vulnerable asylum-seekers and assessing their needs. The various tools emanating from UNHCR and other projects addressed above have been discussed at the national level. In addition, the following principles have been highlighted:

- i. Information on the asylum process is crucial in order to ensure that applicants are aware of their rights and responsibilities and the support that is available to them during the asylum procedure.¹⁶⁵
- ii. Frontline or registration staff should be sensitive to various indicators of vulnerability and should receive training in this regard.¹⁶⁶ This should include the signs and symptoms of torture.¹⁶⁷

¹⁶¹ PROTECT, *Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment* (2010 - 2012), and PROTECT, *Questionnaire and observations for early identification of asylum-seekers having suffered traumatic experiences* (2010 - 2012).

¹⁶² *Ibid.* p. 6-7.

¹⁶³ EVASP, *Transnational Report* (2009- 2010) p.6 (n. 149).

¹⁶⁴ *Ibid.* p. 7.

¹⁶⁵ UNHCR, *RSD Procedural Standards* (3.1.3) (3-2) (n. 144).

¹⁶⁶ UNHCR, *RSD Procedural Standards* (n. 144) emphasizes that registration procedures should be carried out by qualified staff who should receive the necessary training for the responsibilities assigned to them (3.2.3) (3-7).

¹⁶⁷ See *IRCT* (2013) (n. 153).

iii. Frontline/ registration staff should record any visible vulnerabilities on a checklist or the registration form,¹⁶⁸ such as medical needs or disabilities. They should inform staff responsible for the reception and accommodation of asylum-seekers and the nominated individual/s responsible for assessing and acting upon the needs of asylum-seekers (see point iv).

iv. All asylum-seekers should be assessed to determine if they have specific support needs and/or are in need of special procedural guarantees. A comprehensive assessment should be undertaken within a reasonable time after an asylum claim is lodged, preferably by health or social workers. States should nominate suitably qualified people to conduct a comprehensive needs assessment, and provide training where skills are lacking. Personnel carrying out such assessments should be sensitized to identifying vulnerable asylum-seekers, including to the signs and symptoms of torture.

v. Once need is assessed, an action plan should be put in place according to the level of need.

vi. States should preserve the applicant's right to confidentiality and should seek the permission of applicants in relation to revealing information. Only information that is directly relevant to addressing the applicant's needs should be disclosed.

vii. Support needs should be communicated to those providing services and, where relevant, the applicant referred.

viii. Procedural needs should be communicated to case workers and there should be specific processes in place to ensure that applicants are not disadvantaged in putting forward their asylum claim. States should develop a process for prioritizing well-founded applications of vulnerable asylum-seekers.¹⁶⁹ States should develop a process for suspending cases pending medical or psychological reports.¹⁷⁰

ix. Case workers should be trained in interviewing vulnerable asylum-seekers,¹⁷¹ and be sensitized to identify various indicators of vulnerability, including the signs and symptoms of torture. Case workers should record any visible vulnerabilities and inform staff responsible for the reception and accommodation of asylum-seekers, and the person nominated to assess the needs of asylum-seekers (see point iv). Case workers should act upon the procedural needs of the applicant. States should develop and adopt guidelines to assist case workers.

x. There should be an ongoing assessment of need at regular intervals and at key points in the asylum process. Key points include:

- prior to the asylum interview
- after the asylum interview
- at the asylum decision stage

¹⁶⁸ UNHCR, *RSD Procedural Standards* (3.4.9) (3-27) (n. 144).

¹⁶⁹ See chapter 5 (5.2.2).

¹⁷⁰ See chapter 5 (5.2.2).

¹⁷¹ See chapter 5 (5.2.3).

4.5. Conclusion

In chapter 1, it is noted that one of the aims of the project is to develop methods for identifying vulnerable asylum-seekers and assessing their specific support and procedural needs. The steps that have been taken towards realizing this objective include missions to reception and accommodation facilities to determine the present capacity of states to introduce identification methods. Meetings have also been held with national authorities to discuss findings and the various principles noted in this chapter. All states have been presented with guidance specific to the national context on developing a method to identify vulnerable asylum-seekers and to assess their needs.

Addressing the specific support and procedural needs of vulnerable asylum-seekers

5.1. Introduction

In the European Commission Green Paper on the future of the Common European Asylum System it was noted that ways to enhance national capacities need to be found by ‘reaching out to all actors involved in devising and implementing measures designed to address the special needs of more vulnerable categories of asylum-seeker’.¹⁷² The actors involved include lawyers, doctors, psychologists, social workers and NGOs. Furthermore, the paper also highlights the need to regulate more precisely what constitutes adequate medical, psychological assistance and counselling and what constitutes a proper response to the needs of children, especially unaccompanied.

The Green Paper also draws attention to the need for states to develop appropriate interview techniques which are sensitive, *inter alia*, to the age, gender and background of the applicant and the need for measures to ensure that decision makers understand and are able to appropriately apply the principles or standards that are relevant to determining an asylum claim made by children and women;¹⁷³ and this applies equally to LGBTI claims, or to victims of trafficking.

In chapter 1, it is noted that one of the stated objectives of the project is to take steps to *develop* the capacity of the national authorities, lawyers, health care professionals, and NGOs to *address* the specific support and/or procedural needs of vulnerable asylum-seekers. The boundaries of this objective must be specifically highlighted. It is not possible within the duration of a fourteen month project to ensure that states implement all of the required measures, where deemed necessary, to develop or further enhance the support provisions for vulnerable asylum-seekers. This is inevitably a mid-to-long term endeavour and, as noted by the Commission, may involve ‘EU-wide training programmes’ which might include the establishment at EU level of, for example, ‘databases and other information exchange tools’ for the dissemination of best practices at operational level.¹⁷⁴

Nevertheless, within the framework of the RVA project, steps have been taken, based on research findings, to *develop* the capacity of national authorities and other actors involved to address both the specific support and/or procedural needs of vulnerable asylum-seekers. In this regard, a number of different activities were implemented to ensure or highlight good practices within and across the central European states respectively. This chapter addresses some of the areas that were highlighted and, where relevant, the measures that were implemented.

¹⁷² EC Green Paper (2007) (n. 11) p. 7.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

5.2. Steps taken towards developing capacity

5.2.1. Unaccompanied and separated asylum-seeking children

UNHCR recommends that once an asylum-seeking child has been identified¹⁷⁵ a guardian be appointed to the child.¹⁷⁶ This individual will be responsible for ensuring that the child's best interests are fully considered and represented throughout the asylum procedure.¹⁷⁷ A guardian should also ensure that the child's legal, social, medical and psychological needs are appropriately considered throughout the asylum procedure and until a durable solution is found for the child.¹⁷⁸ The recast to the Reception Conditions Directive specifies that states must as soon as possible take measures to ensure that a representative represents and assists an unaccompanied minor.¹⁷⁹

The appointment of a suitably qualified guardian to represent the child is a fundamental principle to ensure an unaccompanied or separated child's best interests are fully considered. In relation to developing or enhancing guardianship across the central European states, information was obtained and disseminated from the NIDOS foundation, a Dutch guardianship institution for unaccompanied children. The NIDOS foundation, along with another partner, implemented the project *Towards a European Network of Guardianship Institutions* (ENGI), co-financed by the European Refugee Fund, with the aim to improve guardianship services in the EU Member States.¹⁸⁰ A representative from NIDOS was invited to share information with RVA project staff on good practices in relation to guardianship. NIDOS assists unaccompanied children providing them with legal guardianship arrangements and long term continued care and has the responsibility for the mental and physical well-being of the child.

Other activities under the RVA project towards promoting good practice in relation to unaccompanied or separated children include trainings on handling child asylum cases, interviewing children, and assessing the claims of children.¹⁸¹ Monitoring missions to children's homes for unaccompanied children and briefings with staff were conducted, where applicable, followed by findings presented to national authorities. Auditing of children's case files (interviews and decisions) was also carried out followed by findings presented to national authorities.

5.2.2. Traumatized persons, victims of torture, rape and other serious forms of physical, emotional or sexual violence

There are a number of interrelated issues when dealing with traumatized persons or victims of torture or other harm in asylum procedures. The first is their early identification, which has been discussed

¹⁷⁵ In 2012, the numbers of claims lodged by UASC or separated children were 44 in Bulgaria (3.5% of total applications), 175 in Hungary (8.11% of total applications), 12 in Poland (0.11% of total applications), 43 in Romania (1.7% of total applications), and 43 Slovakia (5.8% of total applications) - UNHCR Asylum Trends (2010-2012) (n. 21).

¹⁷⁶ UNHCR Guidelines on International Protection No. 8: *Child Asylum Claims under Articles 1A(2) and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees* (2009) (para 69); See also the Committee on the Rights of the Child, *Treatment of Unaccompanied and Separated Children Outside of their Country of Origin*, General Comment No.6 (2005) (para 21).

¹⁷⁷ International Committee of the Red Cross, UNHCR and others, *Inter-agency Guiding Principles on Unaccompanied and Separated Children* (January 2004) para 4(e).

¹⁷⁸ UNHCR, *Guidelines on Determining the Best Interests of a Child* (May 2008).

¹⁷⁹ RCD (2013) Article 24(1). See also APD (2013) Article 25(1).

¹⁸⁰ NIDOS and Refugium, *Towards a European Network of Guardianship Institutions* (February 2010).

¹⁸¹ For details of regional trainings, see 5.2.5.

in chapter 4.¹⁸² The second is the referral of victims of torture or other harm for necessary medical and psychological treatment and care.¹⁸³ The third relates to developing policy and guidance in relation to suspending a case pending treatment and the submission of a medical report.¹⁸⁴ The fourth relates to developing policy and guidance in relation to prioritizing an application as well-founded.¹⁸⁵ The fifth relates to interviewing such applicants and acquiring knowledge of problems which could adversely affect the applicant's ability to be interviewed.¹⁸⁶ The sixth relates to ensuring that a credibility assessment takes into account the impact of trauma on memory and behaviour.¹⁸⁷

Work within the framework of the RVA project has included:

- The dissemination of information on the UK Home Office's process in relation to referring applicants to Freedom from Torture¹⁸⁸ and the Helen Bamber Foundation,¹⁸⁹ including the process for suspending case-determination and using medico-legal reports;¹⁹⁰
- Presentations given by representatives from Freedom from Torture and the Helen Bamber Foundation on working practices between the organizations and the UK Home Office at the RVA mid-term conference,¹⁹¹ which was attended by representatives from participating project state authorities;
- National and regional trainings on handling cases, interviewing, or assessing the claims of traumatized persons or victims of torture or other harm;
- Meetings and trainings with NGOs and healthcare professionals to address the development of methods for the identification of traumatized persons and victims of torture or other harm;
- Meetings and trainings with NGOs and healthcare professionals to address the preparation and use of medical reports;
- Facilitating the training of trainers at the European Asylum Support Office on the module on Interviewing Vulnerable Persons (see iii below);
- Auditing of case files (interviews and decisions) followed by findings presented to national authorities.

¹⁸² See IRCT (2013) (n.153).

¹⁸³ RCD, Article 25(1).

¹⁸⁴ 'National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Directive may, inter alia, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)' - APD (2013 Preamble (para 31). UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")*.

¹⁸⁵ UNHCR, *RSD Procedural Standards* (4.6.3) (4-22) (n. 144). UNHCR lists all of the persons who may be vulnerable or have special needs as claims that may determined on a priority basis. This includes 'victims of torture (including gender-based violence), who are suffering from ongoing mental or physical health problems'. Note that this is distinct from accelerated procedures.

¹⁸⁶ Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past - APD (2013) Article (4)(3).

¹⁸⁷ UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report* (May 2013) pp. 61-65 (discussed further below at section iv). Hungarian Helsinki Committee, *Credibility Assessment in Asylum Proceedings: a Multi-Disciplinary Manual* (2013), ch. 6 - Post-traumatic Stress Disorder and Credibility – The Problems of the Traumatic Memory.

¹⁸⁸ Freedom from Torture is a registered charity providing treatment and support to survivors of torture. In addition to medical care, Freedom from Torture offers access to psychiatrists, psychotherapists, psychologists, counsellors, and complementary therapies. Care is provided not only to asylum-seekers but also to British citizens in need of specialised help, such as survivors of Far East prisoner of war camps and victims of sectarian violence in Northern Ireland - <http://www.freedomfromtorture.org/>

¹⁸⁹ The Helen Bamber Foundation work together with survivors of genocide, torture, trafficking and rape who seek safety and refuge. They provide them with practical support and treatment to deal with their pasts and build new futures - <http://www.helenbamber.org/>

¹⁹⁰ The guidance is available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/guidance/medico-legal.pdf?view=Binary>

¹⁹¹ The RVA mid-term conference was held in Prague, Czech Republic, 25-26 April 2013.

5.2.3. Interviewing vulnerable applicants

As part of developing the capacity of states to better meet the needs of vulnerable asylum-seekers, UNHCR, within the framework of the RVA project, facilitated the training of national authority staff (as trainers) from the central European authorities on the module on Interviewing Vulnerable Persons (IVP), developed and provided by the European Asylum Support Office.¹⁹² In addition, the RVA project facilitated that translation of the IVP module into Bulgarian, Hungarian, Polish, Romanian and Slovak which will be uploaded onto the EASO's Asylum Curriculum Training Platform. National trainings are expected to be rolled out in the first quarter of 2014.

5.2.4. The individual and contextual circumstances of the applicant

UNHCR has recently published a report on credibility assessment, based on a project launched in September 2011 entitled *Towards Improving Asylum Decision-Making in the EU* (referred to as 'CREDO').¹⁹³ One of the stated goals of the CREDO project is to 'contribute to better structured, objective, highquality, and protection-oriented credibility assessment practices in asylum procedures conducted by EU Member States'.¹⁹⁴

In order to facilitate the work of the RVA project, extracts of the CREDO report were translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.¹⁹⁵ The parts that were translated include chapter 3 of the report, which underlines that interviewers and decision makers need to keep in mind and take into account the individual and contextual circumstances of the applicant in all aspects of the examination of the application, including throughout a credibility assessment. This chapter provides information on:

- The limits and variations of human memory (reconstruction, memories for facts, dates and objects, emotion and remembering, and retelling);
- The impact of trauma on memory and behaviour;
- Fear and lack of trust;
- Cultural background and customs;
- Education;
- Gender;
- Sexual orientation and/or gender identity;
- Sigma and shame;
- Age and other factors, including social status, profession, religion or belief, rural or urban background, past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations, and experiences in the country of origin, transit and asylum;
- Factors affecting the decision maker.

¹⁹² EASO, Training and Quality – <http://easo.europa.eu/about-us/tasks-of-easo/training-quality>

¹⁹³ UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report* (May 2013), and UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Summary* (May 2013).

¹⁹⁴ CREDO Full Report, *ibid.*, p. 14. Note that UNHCR has also recently launched CREDO 2 which will focus on children.

¹⁹⁵ The translated extracts are available online - <http://www.refworld.org/docid/519b1fb54.html>

The annexes to the CREDO report (Flowcharts and Checklists for Decision Makers) were also translated as they provide useful summary guidance for conducting a credibility assessment, including taking into account the individual and contextual circumstances of the applicant.¹⁹⁶

5.2.5. Decision-making

In accordance with UNHCR's supervisory responsibility, UNHCR has introduced various guidelines on international protection for those applying the refugee definition. Guidelines have been introduced in relation to child asylum claims,¹⁹⁷ gender-related persecution,¹⁹⁸ claims to refugee status based on sexual orientation and gender-identity,¹⁹⁹ and the application of the refugee definition to victims of trafficking and persons at risk of being trafficked.²⁰⁰ UNHCR's guidelines also include information on procedural and evidentiary matters.

In order to develop the capacity of states, summary decision-making guidance in relation to children, gender-related claims and LGBTI was prepared based principally on UNHCR's respective guidelines noted above. The guidance also makes reference to other relevant UNHCR Guidelines,²⁰¹ including UNHCR's guidelines on victims of trafficking. In addition, reference is made to UNHCR's CREDO report and extracted translations, provisions of the recast European asylum Directives, and selected other materials. The guidance is annexed to this report. It is not intended to replace reference to the UNHCR's Guidelines or other relevant materials, but rather to highlight main points in relation to procedural guarantees and the substantive analysis of the refugee definition. The guidance is divided into three areas:

- Prior to Interview
- The asylum interview
- Decision-writing:
 - Background information and the basis of the claim
 - The credibility assessment
 - The analysis of the refugee definition

At the regional level, training was delivered for representatives from all of the participating central European countries and representatives from the asylum authorities of the Czech Republic and Slovenia. It is hoped that the principles highlighted in the training will be disseminated at the national level by the attending representatives. Furthermore, the staff members involved in quality assurance were introduced and trained on the auditing criteria relevant for cases concerning children,

¹⁹⁶ The translated Annexes are available separately at: <http://www.refworld.org/docid/51dd2f0d4.html>

¹⁹⁷ UNHCR Guidelines on International Protection No. 8: *Child Asylum Claims under Articles 1A(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (September 2009).

¹⁹⁸ UNHCR 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* (May 2002).

¹⁹⁹ UNHCR 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* (Oct 2012).

²⁰⁰ UNHCR 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* (April 2006).

²⁰¹ UNHCR Guidelines on International Protection No. 2: *"Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (May 2002); UNHCR 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* (July 2003).

gender-related persecution, and sexual orientation or gender identity. As noted in chapter 1, all of the states participating in the RVA project also took part in the previous projects concerned with improving the quality of asylum decision-making in addition to establishing internal quality assurance mechanisms.²⁰²

²⁰² See chapter 1 (1.2).

Recommendations

Defining vulnerable asylum-seekers

Vulnerable asylum-seekers are those that may require specific support needs and/or procedural safeguards in order to ensure that they are not disadvantaged in putting forward their asylum claim. There is no closed list of who may be a vulnerable asylum-seeker.

Recommendation 1

States should understand that asylum-seekers with specific *support* needs include but are not limited to the following persons:

- children, unaccompanied children, disabled persons, the elderly, pregnant women, single parent families, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, those whose physical safety may be compromised, those with learning needs, and those with little or no community connections.

States should understand that asylum-seekers who may have specific *procedural* needs include but are not limited to the following persons:

- children; those whose claims are based on gender-related grounds, their sexual orientation, or their gender identity; disabled persons; persons with serious illness or mental disorders; and persons who have been subjected to torture, trafficking, rape or other serious forms of psychological, physical or sexual violence.

Identifying and assessing specific needs

States should identify vulnerable asylum-seekers and assess their specific support needs and/or procedural needs *early* in the asylum process. However States should be aware that applicants may only disclose sensitive information at a later stage in the asylum procedure or may become vulnerable during the asylum procedure.

Recommendation 2

States should adopt a method to *identify* vulnerable asylum-seekers and assess their specific support and/or procedural needs which takes account of the following principles:

i. Applicants should have information on the asylum procedure and in particular on their *rights, support services and procedural guarantees*;

ii. Frontline or registration staff should be sensitized to identify indicators of vulnerability, including the signs and symptoms of torture. They should record any visible vulnerabilities and inform staff responsible for the reception and accommodation of asylum-seekers and those responsible for assessing and acting upon the needs of asylum-seekers (see points iii and iv below);

iii. All asylum-seekers should be assessed to determine their level of need as soon as possible after an asylum claim is lodged, and preferably by health or social workers. States should nominate suitably qualified people to conduct a comprehensive needs assessment, and provide training where skills are lacking;

iv. Once needs are assessed, an action plan should be put in place to address specific support and procedural needs in agreement with the applicant. Those carrying out the needs assessment should seek permission from the applicant before revealing sensitive information. Only information that is directly relevant to addressing the applicant's needs should be disclosed;

v. Procedural needs should be communicated to case workers handling the asylum application who should act accordingly;

vi. Case workers should be sensitized to identify various indicators of vulnerability, including the signs and symptoms of torture, and should record any visible vulnerabilities and inform staff responsible for the reception and accommodation of asylum-seekers, and the person nominated to assess the needs of asylum-seekers (see points iii and iv). Case workers should act upon the procedural needs of the applicant;

vii. There should be an ongoing assessment of need at regular intervals and at key points in the asylum process. Key points include:

- prior to the asylum interview
- after the asylum interview
- at the asylum decision stage

Addressing the specific needs of applicants

Recommendation 3

States should:

- Develop the capacity of state health care professionals and all personnel in reception and accommodation facilities to meet the specific needs of vulnerable asylum seekers;

- Enhance collaboration with lawyers, NGO's offering specialist services, and non-state health care professionals to utilize the range of services available at the national level;
- Support the capacity development of lawyers, NGOs offering specialist services and non-state health care professionals, where possible;
- Develop a process to determine claims of vulnerable asylum-seekers as priority well-founded claims. Note that this is distinct from an accelerated process;
- Develop a process for suspending cases pending medical or psychological reports and develop guidance for the use of such reports in decision-making;
- Ensure that decision-makers receive guidance and training on interviewing and assessing the claims of vulnerable asylum-seekers:
 - All decision-makers should be trained on Interviewing Vulnerable Persons (module offered by the European Asylum Support Office);
 - All decision-makers should be trained on taking into account the individual and contextual circumstances of the applicant in all aspects of the examination, including throughout a credibility assessment;
 - All decision-makers should receive guidance and further training on understanding the specific issues that arise in asylum cases concerning children, gender-related persecution, sexual orientation or gender identity, traumatised persons, and victims of torture, trafficking or other harm;
 - Internal quality assurance staff should regularly audit the quality of interviews and decisions in cases involving vulnerable asylum-seekers;
 - Decision-makers should receive training and guidance on dealing with the claims of vulnerable asylum-seekers based on the results of national quality assurance audits.

Summary Decision-making Guidance (Refugee Status Determination)

Children

This guidance has been prepared within the framework of the Response to Vulnerability in Asylum (RVA) project and is intended to provide a broad summary of the relevant criteria to be taken into consideration in determining child asylum claims. This guidance does not address the subsidiary protection criteria and is not definitive - reference to source or other materials should also be made, where relevant.

Criterion:	Guidance:	Relevant Source:
1. Prior to interview:		
Guardianship: Unaccompanied/ Separated Children:	<p>Decision makers should ensure that an unaccompanied or separated child has been provided with an independent guardian who can offer appropriate support.</p> <p>A guardian should ensure that the child's legal, social, medical and psychological and procedural needs are appropriately considered and addressed and that the child is heard during the asylum procedure and until a durable solution is found for the child.</p>	<p><i>UNHCR's Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1A(2) and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (2009) (para 69) ('UNHCR Guidelines on Child Asylum Claims' 2009)</i></p> <p><i>UNHCR's Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997) (para 5.7)</i></p>

		<p><i>Committee on the Rights of the Child, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, General Comment No. 6 (2005) (para 21)</i></p> <p>APD (2013)(recast), Article (25) (1) QD (recast), Article 31 (1)</p>
Legal representative:	The authority should consider whether the nominated case worker is suitably trained and skilled to be able to evaluate objectively and impartially the application and, if not, referral to another case worker may be necessary.	<p><i>UNHCR Guidelines on Child Asylum Claims (1990) (para 69)</i></p> <p>APD (2013) (recast) Article 23</p>
The nominated caseworker:	The authority should consider whether the nominated case worker is suitably trained and skilled to be able to evaluate accurately the reliability and significance of a child's account and, if not, referral to another caseworker may be necessary.	<p><i>UNHCR Guidelines on Child Asylum Claims (2009)(para 72)</i></p> <p>APD (2013)(recast), preamble, para 16 QD (2011) (recast), Article (4)(3)</p>
Information for the child:	Decision makers should ensure that a child has been provided with <i>child-friendly</i> information (or information in a <i>child-friendly</i> manner) to aid understanding of the asylum procedure and of his/her rights and responsibilities.	<p><i>UNHCR Guidelines on Child Asylum Claims (1990) (para 70)</i></p> <p>APD (2013) (recast) (25)(5)(a-b)</p>
Indicators of trafficking:	Decision makers should consider whether there are any indicators of trafficking and, if so, ensure that the child is referred to the relevant authority in accordance with the national referral process.	<p><i>UNHCR's 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</i></p>

	<p>Children may arrive with adults who are not related to them or there may be circumstances which raise concerns which include:</p> <ul style="list-style-type: none"> - little or no evidence of a pre-existing relationship with the adult/s; - no knowledge by the child of the accompanying adult/s. <p>Decision makers should be vigilant to physical and psychological indicators of trafficking as well as signs of sexual exploitation (prostitution and pornography).</p> <p>There are many forced labour and domestic servitude indicators and case workers should be vigilant to signs of: deceptive recruitment, coercive recruitment, exploitation, coercion at destination (i.e. confiscation of documents), abuse of vulnerability (due, for example, to age or family position) [see paper by ILO].</p>	<p><i>of trafficking and persons at risk of being trafficked (2006)</i></p> <p><i>The Council of Europe 2005 Convention on Action against Trafficking in Human Beings</i></p> <p><i>International Labour Organisation: Operational indicators of trafficking in human beings (2009)</i></p> <p>Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims</p>
<p>The decision to interview/ not to interview:</p>	<p>Decision makers should consider whether or not to interview considering the child's best interests.</p> <p>Note:</p> <ul style="list-style-type: none"> - States Parties shall assure to the child who is capable of forming his or her own views the right to express those views the child shall in particular be provided the opportunity to be heard ... either directly, or through a representative or an appropriate body. - A child's own account of his/her experience is often essential for the identification of protection requirements and, in many cases, the child will be the only source of this information. 	<p><i>UNHCR Guidelines on Determining the Best Interests of a Child (May 2008)</i></p> <p><i>UN Convention on the Rights of the Child (1989) (Article 12)</i></p> <p><i>UN Committee on the Rights of the Child, General Comment No. 12 (2009)</i></p> <p><i>UNHCR Guidelines on Child Asylum Claims (2009) (para 70)</i></p>

<p>Age dispute:</p>	<p>If age is disputed, the decision maker should ensure that the dispute is satisfactorily addressed and that the age of the child has been assessed prior to interview (age is a factor in communication method, see below). If an age dispute emerges during the asylum interview the dispute should be satisfactorily addressed prior to an asylum decision being made.</p> <p>Note: The margin of appreciation inherent to all age-assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child.</p>	<p><i>UNHCR Guidelines on Child Asylum Claims (2009) (para 75)</i></p>
<p>Gathering of information:</p>	<p>Decision makers should assume a greater duty to substantiate the application in child claims, especially if the child concerned is unaccompanied, and gather relevant, updated information and all available evidence.</p>	<p><i>UNHCR Guidelines on Child Asylum Claims (2009) (para 73)</i></p> <p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i> (See in particular the flowcharts/ checklists at pp 256 – 267).</p> <p>Excerpts of the full report have been translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.</p>
<p>Timescales:</p>	<p>Decision makers should consider and note the expected timescales for making a decision in a child’s case.</p> <ul style="list-style-type: none"> - Claims made by child applicants should normally be processed on a priority basis; - However, remember that children will need time to build trusting relationships with their guardian and other professional staff and to feel safe and secure. 	<p><i>UNHCR Guidelines on Child Asylum Claims (2009) (para 66)</i></p>

2. The Protection interview:		
<p>Preparation for interview:</p>	<p>The decision maker should assume a greater duty to substantiate the application, as required, before the interview by:</p> <ul style="list-style-type: none"> - gathering and familiarising him/herself with objective information and up-to-date country of origin information, and, as far as possible, particular elements of the claim; - gathering and familiarising him/herself with any other available evidence: supporting evidence might include medical and/or psychological reports, country of origin information, in addition to statements from family members, members of the child's community, guardians, social workers, teachers, and other persons dealing with asylum-seeking children. 	<p><i>UNHCR Guidelines on Child Asylum Claims (2009) (para 73)</i></p> <p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 196)</i></p> <p>APD (2013) (recast), preamble, para (32) QD (2013) (recast), Article 4 (3)</p>
<p>Appropriate interview environment:</p>	<p>The decision maker should ensure an appropriate interview environment by:</p> <ul style="list-style-type: none"> - building a friendly rapport with the child prior to or at the start of the interview; - making the child feel at ease by talking informally about him or herself, ensuring that there is nothing that the child is particularly afraid of concerning the interview, and/or alleviating any fears; - arranging a seating plan that is not intimidating [decision makers should seat the guardian next to the child, the child should not be too far away from the interviewer, the child's view should not be blocked and the interpreter should be off-set]; - providing key information about the interview; - providing breaks at regular intervals. 	<p><i>UNHCR, Interviewing Applicants for Refugee Status (1995)</i> (Chapter 5 – deals specifically with interviewing children)</p> <p>APD (2013) recast), preamble (32) APD (2013) (recast), Article (15)</p>
<p>Communication methods:</p>	<p>The decision maker should select appropriate communication methods taking into account the age, gender, cultural background and maturity of the child as well as the circumstances of the flight and mode of arrival.</p> <p>Note: Non-verbal communication methods include: playing, drawing, writing, role-playing, story-telling and singing.</p>	<p><i>UNHCR Guidelines on Child Asylum Claims (para 70)</i></p>

<p>Focusing the interview/ introducing the theme:</p>	<p>Decision makers should group the questions into themes and deal with each theme separately:</p> <p>Example questions on introducing the theme:</p> <ul style="list-style-type: none"> - <i>'I am now going to ask you questions about xx.'</i> - <i>'I would now like to change what we are talking about and ask you questions about xx.'</i> 	
<p>Questioning style - open and closed questioning:</p>	<p>Decision makers should use open and closed questioning:</p> <p>Open-ended questions should be used to encourage narrative responses:</p> <ul style="list-style-type: none"> • <i>'You told me you were staying with your grandmother that summer. Tell me about that.'</i> • <i>"Could you describe the daily routine of your mother? Tell me about the day when...?"</i> <p>Closed questioning should be used to elicit details clearly:</p> <ul style="list-style-type: none"> • <i>'Tell me about it as best as you can:</i> • what <i>did he say next ...?</i> • who <i>went out from the door ...?</i> • how <i>did you find out that ...?</i> • where <i>is that room located ...?</i> • when <i>did your mother tell you...?'</i> 	
<p>Questioning style:</p>	<p>Decision makers should adopt an appropriate questioning style:</p> <ul style="list-style-type: none"> • Ask one question at a time and not embed too many questions into one sentence; • Ask a younger child to describe the concrete and observable, not the hypothetical or abstract; • Ask the child to define any used terms/phrases to check his/her understanding of it; • Use short sentences and simple words, <i>hurt, do/say bad things</i> instead of <i>persecution</i>; 	

	<ul style="list-style-type: none"> • Avoid too many closed questions (that can only be answered with a single phrase/one word); • Avoid too many questions that can only be answered with YES or NO; • Avoid front-loaded questions: (e.g.: ‘After you did X and then went to Y, what happened to Z...?’) • Avoid WHY questions as much as possible, especially with younger children (this requires a child to evaluate something); • Avoid leading questions that create suggestibility: (e.g.: ‘The policeman hit him, didn’t he?’); • Avoid the projection/transfer of your own feelings; • Avoid expressions of doubt: (e.g.: ‘Are you sure he did that?’); • Avoid questions that are too general (which could result in ‘I don’t know/I cannot remember’ answers); • Avoid asking directly about harm (e.g.: ‘Has anyone ever hurt you?’); • Use all the different senses to get a better picture of events and to help the child remember (e.g.: ‘What colour was the house? How did something smell, sound, look, feel, etc., ...?’). 	
<p>Dealing with potentially adverse credibility findings and putting evidence to the child:</p>	<p>Decision makers should provide the applicant the opportunity at interview to clarify and explain any apparent incomplete or contradictory facts or statements within their own evidence or in relation to objective country information:</p> <ul style="list-style-type: none"> - The interviewer should not be unwilling to question a child on inconsistencies; - The interviewer should make proper use of objective information to question a child and elicit information. 	<p><i>UNHCR’s Procedural Standards for RSD under UNHCR’s mandate (2003) (para 4.3.7)</i></p> <p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 199)</i></p> <p>APD (2013) (recast), Articles (16-17)</p>
<p>Concluding the interview:</p>	<p>Decision makers should conclude the interview with a discussion about more normal present-day events which restores a sense of security. (The child will need time after the interview to restore his or her coping abilities).</p>	

Guardian:	<p>Decision makers should ensure that a guardian fulfils his/her support role.</p> <p>Note that the guardian should have a support role:</p> <ul style="list-style-type: none"> - be seated in a position of support; - be able to recognize if the child is distressed or uncomfortable; - recommend breaks; - not answer questions on the child's behalf. 	
Interpreter:	<p>Decision makers should appropriately control the interpreter:</p> <ul style="list-style-type: none"> - Interpreters should interpret questions in a verbatim manner; - Children may however require more clarification in order to understand the question - interpreters <i>should not clarify</i> but <i>indicate</i> any interpreting/understanding difficulties; - Interpreters should ensure that body language is not intimidating; - Interpreters should demonstrate cultural awareness in terms of the way that children interact with adults (i.e. in some cultures children avoid eye contact). 	
3. Decision writing:		
3.1. Background information and the basis of the claim:		
Bio data and other background information:	<p>The decision should provide brief bio-data details and other background information, for example:</p> <ul style="list-style-type: none"> - <i>name</i>; - <i>where the child is from</i>; - <i>the child's date of birth (noting any age dispute and clearly stipulating the age at which the child has been assessed to be)</i>; - <i>when the child left his/her country of origin</i>; - <i>how the child travelled to the country of asylum</i>; 	

	<ul style="list-style-type: none"> - when the child arrived in the country of asylum; - what date and where the child made an application for international protection; - the date the child was interviewed, or the date of submission of a statement supporting the claim for international protection. 	
The decision:	<p>Decision makers should identify the decision that has been made, for example:</p> <p>After consideration:</p> <ul style="list-style-type: none"> - it has been found that the applicant does/does not qualify for Refugee Status - it has been found that the applicant does/does not qualify for subsidiary protection <p>For the reasons which follow (if refused):</p> <ul style="list-style-type: none"> - the applicant's claim has found not to be credible, or - whilst the applicant's claim has been found to be credible, the applicant does not meet the definition of a refugee or qualify for subsidiary protection. 	
Identifying the basis of the application:	<p>The decision maker should identify the basis of the application be aware of child specific forms of persecution (see below).</p> <ul style="list-style-type: none"> - e.g. <i>The applicant has made a claim for international protection on the basis that she rejected an arranged customary marriage and fears harm from her family.</i> <p>Note: The purpose of identifying the basis of the application is to demonstrate that decision makers have understood the basis of the claim.</p> <p>Note: In cases concerning children, children may be unable articulate the basis of the application and it may be for the decision maker to determine this on the basis of all known circumstances.</p>	<p><i>UNHCR's Guidelines on Child Asylum Claims (para 73)</i></p> <p>QD (2011) (recast), preamble (28) QD (2011) (recast), Article (9)(2)(f)</p>

<p>Summary of the claim:</p>	<p>Decision makers should provide a summary of the claim. Decision makers should detail those facts which relate to why the applicant left his/her country of origin; in doing so decision makers should identify:</p> <ul style="list-style-type: none"> • all of the main events and actions (what happened?); • the stated locations of all the main events and actions (where did it happen?); • the stated dates for all main events and actions (when did it happen?); • all persons involved in the claim ('who was involved'); • the stated reasons for main events and actions, if known (why did it happen?). <p>Note: Children cannot be expected to provide adult-like accounts of their experiences. They may have difficulty articulating their fear. ... They may be too young or immature to be able to evaluate what information is important or to interpret what they have witnessed or experienced in a manner that is easily understandable to an adult. Some children may omit or distort vital information or be unable to differentiate the imagined from reality. They also may experience difficulty relating to abstract notions, such as time or distance.</p>	<p><i>UNHCR's Guidelines on Child Asylum Claims (para 72)</i></p>
<p>Identifying the future fear:</p>	<p>Decision makers should specify the applicant's <i>future fear</i>:</p> <p>- <i>e.g. On return the applicant fears physical harm from her family.</i></p> <p>As noted, children may be unable to articulate the basis of the application and thus also unable to express their future fear and it may be for the decision maker to determine this on the basis of all known circumstances.</p>	<p><i>UNHCR's Guidelines on Child Asylum Claims (para 73)</i></p>

3.2. Conducting a credibility assessment:		
Identifying the material facts:	<p>The decision maker should identify all of the material facts and list them in a logical order.</p>	<p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i></p> <p>(See in particular the flowcharts/checklists at pp 254 – 261).</p> <p>Excerpts of the full report have been translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.</p>
Country information:	<p>In relation to proceeding to conduct the credibility assessment, decision makers should appropriately source and apply relevant country information to the determination of the material facts.</p> <p>Decision makers should be sensitive to the need to source information that relates to the determination of material facts, noting the date of events and the date of the information; the information should reflect the experiences of children in the country of origin, which can be quite distinct from information relating to adults.</p>	<p><i>UNHCR's Guidelines on Child Asylum Claims (paras 74)</i></p>
Assessing the material facts:	<p>The decision maker should make a clear finding in relation to each of the material facts identified and state which facts are:</p> <ul style="list-style-type: none"> - <i>accepted</i> and why; - <i>rejected</i> and why; - accepted by applying the <i>benefit of doubt</i>. <p>Each fact must be considered in relation to the credibility indicators and in light of individual and contextual circumstances.</p>	

	<p>The credibility indicators are:</p> <p>sufficiency of detail and specificity, internal consistency, consistency of the applicant’s statements with information provided by family members or witnesses, consistency of the applicant’s statements with available specific and general information including country of origin, plausibility.</p> <p>The relevant Individual and contextual circumstances are:</p> <p>the limits and variation of human memory, the impact of trauma on memory and behavior, fear and lack of trust, cultural background and customs, education, gender, sexual orientation and/or gender identity, stigma and shame, age, and other factors, including past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations, and experiences in the country of origin, transit and asylum.</p> <p>Decision makers should take into account relevant individual and contextual circumstances of the applicant in an integrated way throughout the credibility assessment (when determining whether to accept a material fact, reject a material fact or to apply the benefit of doubt).</p>	<p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i></p> <ul style="list-style-type: none"> - The flowchart at p. 261 provides an overview of the structured approach to a credibility assessment. - See chapter 5 and summary flowchart at p. 260 for details on the credibility indicators. - See chapter 3 and summary flowchart at pp. 258-259 for details on individual and contextual circumstances.
<p>The benefit of the doubt:</p>	<p>In children’s cases, decision makers should adopt a liberal application of the benefit of doubt:</p> <p>Once it is determined which facts are accepted and why, and which facts are rejected and why, decision makers should consider whether to apply the benefit of the doubt for each remaining material fact about which an element of doubt remains. When the statements are on the whole coherent, plausible and consistent with COI, and any explanations provided by the applicant for apparent contradictions, inconsistencies, omissions and implausibilities are reasonable, the benefit of the doubt should be applied.</p>	<p><i>UNHCR Guidelines on Child Asylum Claims (para 73)</i></p>

3.3. The analysis of the refugee definition:		
Use of COI in the legal analysis:	<p>When considering the legal analysis, decision makers should source up-to-date information that reflects the experiences of children, which can be quite distinct from information relating to adults.</p> <p>Note: The analysis is whether the child faces a <i>future</i> risk of persecution.</p>	<i>UNHCR Guidelines on Child Asylum Claims (para 74)</i>
Well-founded fear (future risk analysis):	<p>Subjective fear: This will be determined by considering those accepted material facts.</p> <p>Note: It may be the case that a child is unable to express fear when this would be expected or, conversely, exaggerates the fear. In such circumstances, decision-makers must make an objective assessment of the risk that the child would face, regardless of that child's fear.</p> <p>When the parent or caregiver of a child has a well-founded fear of persecution for their child, it may be assumed that the child has such a fear, even if s/he does not express or feel that fear.</p> <p>Objective fear: An accurate assessment requires both an up-to-date analysis and knowledge of child-specific circumstances in the country of origin, including of existing child protection services. Dismissing a child's claim based on the assumption that perpetrators would not take a child's views seriously or consider them a real threat could be erroneous. This would require consideration of evidence from a wide array of sources, including child-specific country of origin information.</p>	<i>UNHCR Guidelines on Child Asylum Claims (para 11)</i>
Persecution:	<p>Types of child-specific persecution include but are not limited to:</p> <ul style="list-style-type: none"> - under-age recruitment, child trafficking, female genital mutilation, family and domestic violence, forced or underage marriage, bonded or hazardous child 	<i>UNHCR Guidelines on Child Asylum Claims (paras 15 – 36)</i>

labour, forced labour, forced prostitution, child pornography, violations of survival and development rights, severe discrimination of children born outside strict family planning rules and of stateless children as a result of loss of nationality and attendant rights.

Identity-based, economic and social characteristics may increase risk of harm or influence types of persecution – case workers should consider family background (homeless, abandoned or without parental care), class, caste, health, education, and income level. Types of increased or influenced harm include but are not limited to:

- increased risk of sexual abuse;
- increased risk of exploitation or of being recruited or used by an armed force/group or criminal gang;
- increased risk of trafficking for the purpose of irregular adoption;
- street children may be rounded up and detained in degrading conditions or be subjected to other forms of violence, including murder for the purpose of “social cleansing”;
- children with disabilities may be denied specialist or routine medical treatment or be ostracized by their family or community;
- children in what may be viewed as unconventional family situations including, for instance, those born out of wedlock, in violation of coercive family policies, or through rape, may face abuse and severe discrimination. Pregnant girls may be rejected by their families and subject to harassment, violence, forced prostitution or other demeaning work.

Harm against close relatives of the child:

- children may witness violence against, or experience the disappearance or killing of a parent or other person on whom they depends;
- children may be forcibly separated from their parents, due to discriminatory custody laws or the detention of the child’s parent(s).

UNHCR 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 (2006) (para 20)

<p>Agents of persecution:</p>	<p>Decision makers should identify the agent of persecution:</p> <p>In child claims, the agent of persecution is frequently a non-State actor, examples include:</p> <ul style="list-style-type: none"> - militarized groups, - criminal gangs; - parents and other caregivers; - community and religious leaders. 	<p><i>UNHCR Guidelines on Child Asylum Claims (para 37)</i></p> <p>QD (2011) (recast), Article (6)</p>
<p>The Refugee Convention grounds:</p>	<p>Decision makers should identify and assess a Refugee Convention ground:</p> <p>Race/ nationality/ ethnicity: Relevant to policies that apply to children of a particular race or ethnicity:</p> <ul style="list-style-type: none"> - a child denied the right to a nationality to be registered at birth; - a child denied the right to education or to health services; - policy to remove children from their parents; - systemic targeting of girls for rape or human trafficking; - recruitment into armed forces. <p>Religion:</p> <ul style="list-style-type: none"> - It is sufficient that the child simply be perceived as holding a certain religious belief or belonging to a sect or religious group. <p>Political opinion:</p> <p>Children can be politically active and hold particular political opinions independently of adults. Whether or not a child is capable of holding a political opinion is a question of fact and is to be determined by assessing the child's level of maturity and development, level of education, and his/her ability to articulate those views.</p>	<p><i>UNHCR Guidelines on Child Asylum Claims (paras 40 – 52)</i></p>

	<p>- The [political] views or opinions of adults, such as the parents, may be imputed to children.</p> <p>Membership of a particular social group:</p> <p>A particular social group is 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. Sex is an innate or immutable characteristic.</p> <p>Being a child is in effect an immutable characteristic at any given point time. Thus children or a smaller subset of children may constitute a particular social group.</p> <p>- Other groups include, but are not limited to:</p> <p>‘abandoned children’, ‘children with disabilities’, ‘orphans’, children born outside coercive family planning policies or of unauthorized marriages (sometimes referred to as ‘black children’), street children, children affected by HIV/AIDS, and children recruited or used by an armed force or group.</p>	<p><i>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 (2002)</i></p>
<p>State protection:</p>	<p>Decision makers should consider state protection issues:</p> <p>- Is there a legal system that criminalizes and provides sanctions for the persecutory conduct?</p> <p>- Do the authorities ensure that such incidents are effectively investigated and that those responsible are identified and appropriately punished?</p> <p>Note: The enactment of legislation prohibiting or denouncing a particular persecutory practice against children, in itself, is not sufficient to reject a child’s claim to refugee status.</p>	<p><i>UNHCR Guidelines on Child Asylum Claims (paras 37 – 39)</i></p> <p>QD (2011) (recast), Article (7)</p>

The internal flight alternative:

Decision makers should take into primary consideration the child's **best interests** when considering the relevance and reasonableness of an Internal Flight Alternative (IFA):

- The analysis should pay particular attention to the child's personal circumstances when considering whether they could live safely away from their home area; in particular, the analysis should factor age, level of development and maturity, access to care arrangements and the psychological effects of past persecution;
- Where children are unaccompanied and, therefore, not returning to the country of origin with family members or other adult support, special attention needs to be paid as to whether or not such relocation is reasonable.

UNHCR Guidelines on Child Asylum Claims (paras 53 – 57)

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 (2003)

Summary Decision-making Guidance (Refugee Status Determination)

Gender-related Persecution

This guidance has been prepared within the framework of the Response to Vulnerability in Asylum (RVA) project and is intended to provide a broad summary of the relevant criteria to be taken into consideration in determining cases concerning gender-related persecution. Gender-related claims may be brought by either women or men, and girls or boys; although due to particular types of persecution, they are more commonly brought by women and girls. This guidance does not address the subsidiary protection criteria and is not definitive - reference to source or other materials should also be made, where relevant.

Criterion:

Guidance:

Relevant Source:

All materials cited are available on UNHCR's Refworld:
<http://www.refworld.org/>

1. Prior to interview:

Information for the applicant:

The applicant should be advised from the outset that he/she may request that the protection interview be conducted by staff and interpreters of a sex preferred by him/her.

The applicant should be given information on the right to make an independent claim and that such information will be treated confidentially [Such information may aid in the disclosure of individual protection needs].

The applicant should be given information on the right to claim asylum on gender grounds.

UNHCR 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 (2002) (para 36(ii)(iii)) ('UNHCR Guidelines on Gender-Related Persecution')

APD (2013) (recast), Article (15)(3)
APD (2013) (recast), Article (19)(1)

<p>The early identification of any specific support/procedural needs:</p>	<p>Specific support needs and/ or procedural needs should be suitably identified and addressed (i.e., referral for counselling in cases of sexual violence or other serious harm, consideration of when to schedule interview – claims of this nature are generally unsuitable for accelerated processing, etc.).</p>	<p><i>UNHCR Guidelines on Gender-Related Persecution (2002) (paras 36)(xii)</i></p> <p>RCD (2013)(recast), Article (21) RCD (2013)(recast), Article (22) APD (2013) (recast), Preamble, para (29) APD (2013) (recast), Article (24)</p>
<p>The nominated case worker:</p>	<p>The authority should consider whether the nominated case worker is suitably trained and skilled to be able to evaluate objectively and impartially the application and, if not, referral to another case worker may be necessary.</p>	<p><i>UNHCR Guidelines on Gender-Related Persecution (2002) (para 36)</i></p> <p>APD (2013)(recast), preamble, para 16 QD (2011) (recast), Article (4)(3)</p>
<p>Indicators of trafficking:</p>	<p>Decision makers should consider whether there are any indicators of trafficking and, if there is a reasonable ground indication that the person may be a victim of trafficking, ensure that the applicant is referred to the relevant authority in accordance with the national referral mechanism.</p> <p>This is a complex area and decision makers should be trained to identify and be vigilant to the signs of trafficking. Broadly speaking, signs encompass:</p> <p>Physical Indicators: bodily injuries, neurological problems, gastroenterological symptoms, cardiovascular symptoms, musculoskeletal symptoms, work related injuries, tattoos demonstrating ‘ownership’;</p> <p>Sexual Health Indicators: pregnancy, sexually transmitted diseases, injuries of a sexual nature, gynecological symptoms;</p> <p>Psychological Indicators: fear, anxiety, depression, isolation, symptoms of post-traumatic stress, drug or alcohol dependency, suicidal thoughts or self-harm, shame;</p>	<p><i>UNHCR’s 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 (2006)</i></p> <p>The Council of Europe 2005 Convention on Action against Trafficking in Human Beings Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims</p>

	There are many forced labour and domestic servitude indicators and decision makers should be vigilant to signs of: deceptive recruitment, coercive recruitment, exploitation, coercion at destination (i.e. confiscation of documents), abuse of vulnerability (due, for example, to age or family position) [see paper by ILO].	<i>International Labour Organisation: Operational indicators of trafficking in human beings (2009)</i>
Gathering of evidence:	<p>The decision maker should assume a shared duty to substantiate the application.</p> <p>Note: the shared duty is not limited to gathering of county of origin information and also includes:</p> <ul style="list-style-type: none"> - the provision of information and guidance to the applicant; - the provision of guidance through the use of appropriate questioning during the interview; - the provision of an opportunity to explain potential adverse credibility findings; - the gathering of evidence bearing on the application by his or her own means. 	<p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 196)</i></p> <p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i> (See in particular the flowcharts/checklists at pp 256 – 267).</p> <p>Excerpts of the full report have been translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.</p>
Timescales:	<p>Decision makers should use discretion to ensure the expected timescales for providing additional information and making a decision in the particular case at hand taking due account of the individual and contextual circumstances of the applicant.</p> <p>Note: The examination of claims for international protection made by applicants who demonstrate mental or emotional disturbance may require greater time to ascertain the material facts of the application. Further, due to their often complex nature, claims based on sexual orientation and/or gender identify are generally unsuitable for accelerated processing.</p>	<i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 212)</i>

2. The Protection interview:

<p>Preparation for the interview:</p>	<p>. The decision maker should assume a shared duty to substantiate the application, as required, before the interview by:</p> <ul style="list-style-type: none"> - gathering objective, relevant and up-to-date information about the country of origin, and, as far as possible, particular elements of the claim; - providing information to the applicant about his or her duty to substantiate the application and guidance on how to do so; - familiarizing him/herself with the facts of the application. <p>The decision maker should familiarize him/herself with the role, status, and treatment of women and men, boys and girls in the country from which the applicant has fled, using Country of Origin Information. Issues to consider include:</p> <ul style="list-style-type: none"> • Position of women before the law; • Political rights of women; • Social and economic rights of women; • Consequences for persons who refuse to abide by or who challenge social, religious or cultural norms regarding their behaviour; • Efficacy of protection available to such persons; • Consequences that may befall such persons on their return. <p>The usual types of evidence may not be readily available due to under-reporting; alternative sources of information include testimonies of other similarly situated persons in reports of non-governmental or international organizations or other independent research.</p>	<p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 196)</i></p> <p><i>UNHCR Guidelines on Gender-Related Persecution (2002) (paras 36, 37)</i></p> <p>APD (2013) (recast), preamble, para (32) QD (2013) (recast), Article 4 (3)</p>
<p>Appropriate interview environment:</p>	<p>The decision maker should ensure an appropriate interview environment by:</p> <ul style="list-style-type: none"> - interviewing the applicant separately (in the absence of family members and of any children) [note that this is a prerequisite in all cases and especially in cases where a claim of sexual abuse has been made or is considered to be a possibility]; 	<p><i>UNHCR Guidelines on Gender-Related Persecution (2002) (para 35)</i></p> <p>APD (2013) recast, preamble (32) APD (2013) (recast), Article (15)</p>

	<ul style="list-style-type: none"> - creating a supportive environment where the applicant was reassured of the confidentiality of his/her claim [some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared]; - arranging an appropriate seating plan [the interpreter should be off-set and the applicant's view should not be blocked]; - providing key information about the interview; - providing breaks at regular intervals. 	
Focusing the interview/ introducing the theme:	<p>The decision maker should introduce focused themes of questioning on sensitive issues appropriately:</p> <p>Example questions on introducing the theme:</p> <ul style="list-style-type: none"> - <i>'I would like now to ask you questions about the incident you referred to which occurred the time you visited the house of your uncle - are you comfortable to talk about this?'</i> - <i>'I would now like to change what we are talking about and ask you questions about what happened after the events you have just described – are you comfortable and ready to move on?'</i> <p>In relation to questioning on sensitive matters, it is important to introduce such themes carefully and avoid being too direct, i.e. the decision maker should avoid phrases such as:</p> <ul style="list-style-type: none"> - <i>'I am now going to ask you questions about the rape which occurred the time you visited the house of your uncle', or 'I would like to talk about the rape that you mentioned'.</i> <p>In all questions, the interviewer should take into account the personal background of the applicant to ensure the language used and questions asked are appropriate to his/her individual and contextual circumstances.</p>	<i>UNHCR Guidelines on Gender-Related Persecution (2002) (Part III. Procedural Issues)</i>
Questioning style – traumatic events:	The decision maker should avoid unnecessary details in relation to traumatic events.	

	<p>Note: It is unnecessary to establish the precise details of the act of rape or sexual assault itself, but events leading up to, and after, the act, the surrounding circumstances and details (such as, use of guns, any words or phrases spoken by the perpetrators, type of assault, where it occurred and how, details of the perpetrators (e.g. soldiers, civilians) etc.) as well as the motivation of the perpetrator may be required. In some circumstances it should be noted that a woman may not be aware of the reasons for her abuse.</p> <p>Open-ended questions should be used to encourage narrative responses and closed questioning should be used to elicit details clearly.</p>	
<p>Dealing with potentially adverse credibility findings:</p>	<p>The decision maker should provide the applicant the opportunity at interview to clarify and explain any apparent incomplete or contradictory facts or statements within their own evidence or in relation to objective country information.</p> <ul style="list-style-type: none"> - The decision maker should not be unwilling to question an application inconsistencies relating to sensitive matters <u>in an appropriate way</u> – decision makers should understand that cultural differences and trauma play an important and complex role in determining behaviour; - The decision maker should make proper use of objective information which is <u>relevant to the experiences of persons similarly situated</u> to question and elicit information. 	<p><i>UNHCR's Procedural Standards for RSD under UNHCR's mandate (2003) (para 4.3.7)</i></p> <p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 199)</i></p> <p><i>UNHCR Guidelines on Gender-Related Persecution (2002) (36)(xi)</i></p> <p>APD (2013) (recast), Articles (16-17)</p>
<p>3. Decision writing:</p>		
<p>3.1. Background information and the basis of the claim:</p>		
<p>Bio-data and other background information:</p>	<p>The decision should provide brief bio-data details and other background information, for example:</p>	

	<ul style="list-style-type: none"> - name; - details of dependants; - where the applicant is from; - the applicant's date of birth; - when the applicant left his/her country of origin; - how the applicant travelled to the country of asylum; - when the applicant arrived in the country of asylum; - what date and where the applicant made an application for international protection; - the date the applicant was interviewed, or the date of submission of a statement supporting the claim for international protection. 	
<p>The decision:</p>	<p>Decision makers should identify the determination that has been made, for example:</p> <p>After consideration:</p> <ul style="list-style-type: none"> - it has been found that the applicant does/does not qualify for Refugee Status - it has been found that the applicant does/does not qualify for subsidiary protection <p>For the reasons which follow (if refused):</p> <ul style="list-style-type: none"> - the applicant's claim has found not to be credible, or - whilst the applicant's claim has been found to be credible, the applicant does not meet the definition of a refugee or qualify for subsidiary protection. 	
<p>Identifying the basis of claim:</p>	<p>Decision makers should identify the basis of the application:</p> <ul style="list-style-type: none"> - e.g. <i>The applicant is a widow and has made a claim for international protection on the basis that she is being forced to marry her brother-in-law [widow inheritance].</i> <p>Note: The purpose of identifying the basis of the application is to demonstrate that decision makers have understood the basis of the claim and are focused on the material facts of the application.</p>	

Detailing the basis of claim:	<p>Decision makers should provide a summary of the claim. Decision makers should detail those facts which relate to why the applicant left his/her country of origin; in doing so decision makers should identify:</p> <ul style="list-style-type: none"> • all of the main events and actions (what happened?); • the stated locations of all the main events and actions (where did it happen?); • the stated dates for all main events and actions (when did happen?); • all persons involved in the claim ('who was involved'); • the stated reasons for main events and actions, if known (why did it happen?). 	
Identifying the future fear:	<p>Decision makers should specify the applicant's <i>future fear</i>: - e.g. <i>On return the applicant fears forced marriage and/or harm from her brother in law.</i></p>	
3.2. The credibility assessment:		
Identifying the material facts:	<p>The decision maker should identify all of the material facts and list them in a logical order.</p>	<p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i></p> <p>(See in particular the flowcharts/ checklists at pp 254 – 261).</p> <p>Excerpts of the full report have been translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.</p>
Country of origin information and other evidence:	<p>In relation to the identified material facts, the decision maker should appropriately source and apply relevant country of origin information to the determination of the material facts; noting the date of events and the date of the information. The case worker should do the same with all other evidence available to substantiate the application.</p>	<p><i>UNHCR Guidelines on Gender-Related Persecution (para 36)(x)</i></p> <p>APD (2013) (recast), preamble (39)</p>

	<p>Decision makers should be sensitive to the need to source and apply information that reflects the experiences of <u>women</u> in the country of origin, which can be quite distinct from information relating to male applicants.</p> <p>The decision maker should familiarize him/herself with the role, status, and treatment of women in the country from which a woman has fled, using country of origin Information and all other available to substantiate the application. Issues to consider include:</p> <ul style="list-style-type: none"> • Position of women before the law; • Political rights of women; • Social and economic rights of women; • Consequences for women who refuse to abide by or who challenge social, religious or cultural norms regarding their behaviour; • Efficacy of protection available to women; • Consequences that may befall a woman on her return. <p>Usual types of evidence may not be readily available due to under-reporting; alternative sources of information include testimonies of other women in reports of non-governmental or international organisations or other independent research.</p> <p>The decision maker should gather and apply any other available evidence in the assessment of the material facts (e.g. medical or psychological reports).</p>	
<p>Assessing the material facts:</p>	<p>The decision maker should make a clear finding in relation to each of the material facts identified and state which facts are:</p> <ul style="list-style-type: none"> - <i>accepted</i> and why; - <i>rejected</i> and why; - accepted by applying the <i>benefit of doubt</i>. <p>Each fact must be considered in relation to the credibility indicators and in light of individual and contextual circumstances.</p>	<p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i></p> <ul style="list-style-type: none"> - The flowchart at p. 261 provides an overview of the structured approach to a credibility assessment;

	<p>The credibility indicators are:</p> <ul style="list-style-type: none"> - sufficiency of detail and specificity, internal consistency, consistency of the applicant's statements with information provided by family members or witnesses, consistency of the applicant's statements with available specific and general information including country of origin, plausibility. <p>The relevant individual and contextual circumstances are:</p> <ul style="list-style-type: none"> - the limits and variation of human memory, the impact of trauma on memory and behavior, fear and lack of trust, cultural background and customs, education, gender, sexual orientation and/or gender identity, stigma and shame, age, and other factors, including past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations, and experiences in the country of origin, transit and asylum. <p>Decision makers should take into account relevant individual and contextual circumstances of the applicant in an integrated way throughout the credibility assessment (when determining whether to accept a material fact, reject a material fact or to apply the benefit of the doubt).</p>	<ul style="list-style-type: none"> - See chapter 5 and summary flowchart at p. 260 for details on the credibility indicators; - See chapter 3 and summary flowchart at pp 258-259 for details on individual and contextual circumstances.
<p>The benefit of the doubt:</p>	<p>Once it is determined which facts are accepted and why, and which facts are rejected and why, decision makers should consider whether to apply the benefit of the doubt for each remaining material fact about which an element of doubt remains. When the statements are on the whole coherent, plausible and consistent with COI, and any explanations provided by the applicant for apparent contradictions, inconsistencies, omissions and implausibilities are reasonable, the benefit of the doubt should be applied.</p>	<p>[See above - credibility assessment guidance]</p>

3.3. The analysis of the refugee definition:		
Use of COI in the legal analysis:	When considering the analysis of future risk, the decision maker should source up-to-date information that reflects the experiences of women in the country of origin, which can be quite distinct from information relating to men. Note: The analysis is whether the applicant has a well-founded fear of persecution or serious harm.	<i>UNHCR Guidelines on Gender-Related Persecution (2002) (para 36) (x)</i>
Well-founded fear of persecution (future risk analysis):	An assessment requires both an up-to-date analysis and knowledge of the gender-specific circumstances in the country of origin.	<i>UNHCR Guidelines on Gender-Related Persecution (2002) (paras 9 -13)</i>
Types of gender-specific persecution:	Types of gender-specific persecution includes, but is not limited to: sexual violence, dowry-related violence, female genital mutilation, domestic violence, trafficking, application of persecutory laws emanating from traditional or cultural norms and practices which are not necessarily in conformity with international human rights standards, disproportionate penalty or punishment for non-compliance with or breach of a policy or law (punishment for transgressing social mores).	<i>Guidelines on Gender-Related Persecution (2002) (paras 10 – 12)</i>
Where a women fears practice which is in fact prohibited by a state:	In cases where a woman fears prohibited persecutory practice (e.g. female genital mutilation), the decision maker should consider whether the State nevertheless continues to condone or tolerate the practice, or may not be able to stop the practice effectively.	<i>UNHCR’s Guidelines on Gender-Related Persecution (2002) (para 11)</i>
Where a woman fears disproportionate penalty or punishment:	In cases where a woman fears penalty or punishment for non-compliance with or breach of a policy or law, the decision maker should consider whether this is disproportionately severe and has a gender dimension . Note: <u>Even where laws or policies have justifiable objectives</u> , methods of implementation that lead to consequences of a substantially prejudicial nature for the persons concerned, would amount to persecution. For example,	<i>UNHCR’s Guidelines on Gender-Related Persecution (2002) (paras 12- 13)</i>

	implementation of family planning laws through the use of forced abortions and sterilisations would breach fundamental human rights law and considered persecution.	
Discrimination amounting to persecution:	<p>The decision maker should analyse forms of discrimination by the State in failing to extend protection to individuals against certain types of harm.</p> <p>Note: If the State, as a matter of policy or practice, does not accord certain rights or protection from serious abuse, then the discrimination in extending protection, which results in serious harm inflicted with impunity, could amount to persecution. Particular cases of domestic violence, could, for example, be analysed in this context.</p>	<i>UNHCR's Guidelines on Gender-Related Persecution (2002) (para 15)</i>
Trafficked victims:	<ul style="list-style-type: none"> - The decision maker should consider whether the victim could be susceptible to serious reprisals by traffickers after her escape and/or upon return (Especially where the applicant has cooperated with the authorities in the country of asylum or the country of origin in investigations). - The decision maker should consider the possibility of the victim being re-trafficked - The decision maker should consider the possibility of the victim being subjected to severe family or community ostracism and/or severe discrimination. <p>Note: Even if such treatment does not give rise to a well-founded fear of persecution, such rejection by, and isolation from, social support networks may in fact heighten the risk of being re-trafficked or of being exposed to retaliation, which could then give rise to a well-founded fear of persecution.</p> <ul style="list-style-type: none"> - The decision maker should consider forms of severe exploitation inherent in the trafficking experience such as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution. 	<i>UNHCR's 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 (2006) (paras 15 – 19)</i>

<p>Agents of persecution:</p>	<p>The decision maker should identify the agent of persecution:</p> <p>Family Members: domestic violence, sexual abuse of female children in the household, dowry-related violence, marital rape, forced impregnation, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.</p> <p>Community Members: rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.</p> <p>State Harm: Condoned physical, sexual and psychological violence perpetrated or condoned by the state.</p>	<p><i>UNHCR’s Guidelines on Gender-Related Persecution (para 19)</i></p> <p>QD (2011) (recast) Article (6)</p>
<p>The Refugee Convention grounds:</p>	<p>The decision maker should identify and assess a Refugee Convention ground adopting a gender-sensitive approach.</p> <p>Race, religion, nationality, political opinion:</p> <p>- In many cases, women may face persecution because of a Convention ground which is attributed or imputed to them. In many societies a woman’s political views, race, religion or social affiliations, for example, are often seen as aligned with relatives or associates or with those of her community.</p> <p>Membership of a particular social group:</p> <p>A particular social group is 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. Sex is an innate or immutable characteristic. Women may be thus defined as a social subset frequently treated differently than men. Thus women may constitute a particular social group.</p> <p>- Other groups include, but are not limited to:</p> <p>‘women who have transgressed social mores’, ‘women who face domestic abuse’,</p>	<p><i>UNHCR Guidelines: Gender-related persecution (2002) (paras 22 - 23)</i></p> <p><i>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 (2002)</i></p>

	<p>‘women who face female genital mutilation’, ‘women who face forced sterilisation’, ‘women who have committed adultery’, ‘lone women’, ‘victims of trafficking’.</p> <p>Note: In gender-related claims, the persecution feared could be for one, or more, of the Convention grounds - a claim for refugee status based on transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group.</p>	
State protection:	<p>The decision maker should consider relevant state protection issues.</p> <ul style="list-style-type: none"> - Is there a legal system that criminalizes and provides sanctions for the persecutory conduct? - Do the authorities ensure that such incidents are effectively investigated and that those responsible are identified and appropriately punished? <p>Note: The enactment of legislation prohibiting or denouncing a particular persecutory practice against women, in itself, is not sufficient to reject a woman’s claim to refugee status.</p>	QD (2011) (recast), Article (7)
The internal flight alternative:	<p>The decision maker should take into consideration all relevant factors when considering the relevance and reasonableness of an Internal Flight Alternative (IFA).</p> <ul style="list-style-type: none"> • Can the applicant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? <p>Issues to consider include:</p> <ul style="list-style-type: none"> - Personal circumstances - Past persecution - Safety and security - Respect for human rights - Economic survival 	<i>UNHCR 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 (2003) (para 7)</i>

Summary Decision-making Guidance (Refugee Status Determination)

Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI)

This guidance has been prepared within the framework of the Response to Vulnerability in Asylum (RVA) project and is intended to provide a broad summary of the relevant criteria to be taken into consideration in determining LGBTI asylum cases. This guidance does not address the subsidiary protection criteria and is not definitive - reference to source or other materials should also be made, where relevant.

Criterion:	Guidance:	Relevant Source:
Prior to interview:		
Information for the applicant:	<p>The applicant should be advised from the outset that he/she may request that the protection interview be conducted by staff and interpreters of a sex preferred by him/her.</p> <p>The applicant should be given information on confidentiality [Such information may aid in the disclosure of individual protection needs].</p> <p>The applicant should be given information in relation LGBTI rights in Europe and information on LGBTI rights and available support services from NGOs.</p>	<p><i>UNHCR 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 (2012) (Part V. Procedural Issues) ('UNHCR Guidelines on Sexual orientation and Gender Identity')</i></p> <p><i>UNHCR Guidelines on International Protection No. 1: Gender-Related</i></p>

		<p><i>Per secution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (2002) (para 36)(ii),(iii)</i></p> <p>APD (2013) (recast), Article (15)(3) APD (2013) (recast), Article (19)(1)</p>
The early identification of any specific support/procedural needs:	Specific support needs and/ or procedural needs should be suitably identified and addressed (i.e., referral for counselling in cases of sexual violence or other serious harm, consideration of when to schedule interview – claims of this nature are generally unsuitable for accelerated processing, etc.).	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (2012) (paras 59)</i></p> <p>RCD (2013)(recast), Article (21) RCD (2013)(recast), Article (22) APD (2013) (recast), Preamble, para (29) APD (2013) (recast), Article (24)</p>
The nominated case worker:	The authority should consider whether the nominated case worker is suitably trained and skilled to be able to evaluate objectively and impartially the application and, if not, referral to another case worker may be necessary.	<p><i>UNHCR Guidelines on Sexual orientation and Gender Identity (para 60) (iii), (iv)</i></p> <p>APD (2013)(recast), preamble, para 16 QD (2011) (recast), Article (4)(3)</p>
Gathering of evidence:	<p>The decision maker should assume a shared duty to substantiate the application.</p> <p>Note: the shared duty is not limited to gathering of county of origin information and also includes:</p> <ul style="list-style-type: none"> - the provision of information and guidance to the applicant; - the provision of guidance through the use of appropriate questioning during the interview; - the provision of an opportunity to explain potential adverse credibility findings; 	<p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 196)</i></p> <p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i> (See in particular the flowcharts/ checklists at pp. 256 – 267).</p>

	- the gathering of evidence bearing on the application by his or her own means.	Excerpts of the full report have been translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.
Timescales:	<p>Decision makers should use discretion to ensure the expected timescales for providing additional information and making a decision in the particular case at hand taking due account of the individual and contextual circumstances of the applicant.</p> <p>Note: The examination of claims for international protection made by applicants who demonstrate mental or emotional disturbance may require greater time to ascertain the material facts of the application. Further, due to their often complex nature, claims based on sexual orientation and/or gender identify are generally unsuitable for accelerated processing.</p>	<p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 212)</i></p> <p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (para 59)</i></p>
2. The Protection Interview:		
Preparation for the interview:	<p>The decision maker should assume a shared duty to substantiate the application, as required, before the interview by:</p> <ul style="list-style-type: none"> - gathering objective, relevant and up-to-date information about the country of origin, and, as far as possible, particular elements of the claim; - providing information to the applicant about his or her duty to substantiate the application and guidance on how to do so; - familiarizing him/herself with the facts of the application. <p>The decision maker should as far as possible familiarize him/herself with the situation in the country of origin. Relevant and specific country of origin information on the situation and treatment of LGBTI individuals is often lacking however and the decision maker may have to rely on the applicant's own testimony as the primary and often the only source of information.</p>	<p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 196)</i></p> <p><i>UNHCR Guidelines on Sexual orientation and Gender Identity (paras 64-66)</i></p> <p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i> (See in particular the flowcharts/ checklists at pp. 254 – 261)</p>

	Note: medical testing to determine the applicant's sexual orientation must not be used. Medical evidence of transition-related surgery, hormonal treatment or biological characteristics (in the case of intersex) may corroborate an applicant's personal narrative – such evidence should only be gained by consent of the individual.	APD (2013) (recast), preamble, para (32) QD (2013) (recast), Article 4 (3)
Appropriate interview environment:	<p>The decision maker must ensure an appropriate interview environment by:</p> <ul style="list-style-type: none"> - creating a supportive environment where the applicant is reassured of the confidentiality of his/her claim [Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared]. - arranging an appropriate seating plan [the interpreter should be off-set and the applicant's view should not be blocked]. - providing key information about the interview. - providing breaks at regular intervals. 	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (para 60)</i></p> <p>APD (2013) recast, preamble (32) APD (2013) (recast), Article (15)</p>
Focusing the interview/ introducing the theme:	<p>The decision maker should introduce focused themes of questioning on sensitive issues appropriately:</p> <p>Example questions on introducing the theme:</p> <ul style="list-style-type: none"> - <i>'I would like now to ask you questions about the incident that occurred on ... - are you comfortable to talk about this?</i> - <i>'I would now like to change what we are talking about and ask you questions about what happened after the events you have just described – are you comfortable and ready to move on?'</i> <p>In relation to questioning on sensitive matters it is important to introduce such themes carefully and avoid being too direct, i.e. the interviewer should avoid phrases such as:</p> <ul style="list-style-type: none"> - <i>'I am now going to ask you questions about the rape which occurred the time you were ambushed', or 'I would like to now talk about the sexual attack that you mentioned'.</i> 	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (2012) (Part V)(vii)</i></p>

	In all questions, the interviewer should take into account the personal background of the applicant to ensure the language used and questions asked are appropriate to his/her individual and contextual circumstances.	
Questioning style - types of questioning:	<p>The decision maker should adopt an appropriate questioning style:</p> <ul style="list-style-type: none"> - Questions about sexual conduct are intrusive and do not provide evidence; - People cannot prove their sexual orientation but they can better explain their orientation through their experiences growing up and why it causes them or might cause them problems in their home country – example Q’s: <i>How did you live? How did you avoid persecution?</i> - The interviewer should avoid stereotypical views of sexual orientation and culture; - The interviewer should use vocabulary that is non-offensive and shows positive disposition towards diversity of sexual orientation and gender identity and this should not be lost in translation (note the term ‘homosexual’, although widely used, might be considered derogatory in some countries). 	<i>UNHCR Guidelines on Sexual Orientation and Gender Identity (para 12) (Part V) – Procedural issues (iii – vii)</i>
Questioning style – traumatic events:	<p>The decision maker should avoid unnecessary details in relation to traumatic events:</p> <p>Note: it is unnecessary to establish the precise details of the act of violence, rape or sexual assault itself, but events leading up to, and after, the act, the surrounding circumstances and details as well as the motivation of the perpetrator may be required.</p> <p>Open-ended questions should be used to encourage narrative responses and closed questioning should be used to elicit details clearly.</p>	<i>UNHCR Guidelines on Sexual Orientation and Gender Identity Part V – Procedural issues (vii)</i>
Dealing with potentially adverse credibility findings:	The decision maker should provide the applicant the opportunity at interview to clarify and explain any apparent incomplete or contradictory facts or statements within their own evidence or in relation to objective country information:	<i>UNHCR’s Procedural Standards for RSD under UNHCR’s mandate (2003) (para 4.3.7)</i>

	<ul style="list-style-type: none"> - If sexual orientation is raised later in the claim, it is important to afford the applicant the opportunity to explain why and consider all of the circumstances; - The interviewer should take into consideration that it is common for applicants to not want to talk about past events relating to sexual orientation or gender identity. It is therefore important when questioning to concentrate on consistencies and detail, not just inconsistencies. 	<p><i>UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1992) (para 199)</i></p> <p>APD (2013) (recast), Articles (16-17)</p>
3. Decision writing:		
3.1. Background information and the basis of the claim:		
Bio-data and other background information:	<p>The decision should provide brief bio-data details and other background information, for example:</p> <ul style="list-style-type: none"> - <i>name;</i> - <i>where the applicant is from;</i> - <i>the applicant's date of birth;</i> - <i>details of dependants;</i> - <i>when the applicant left his/her country of origin;</i> - <i>how the applicant travelled to the country of asylum;</i> - <i>when the applicant arrived in the country of asylum;</i> - <i>what date and where the applicant made an application for international protection;</i> - <i>the date the applicant was interviewed, or the date of submission of a statement supporting the claim for international protection.</i> 	
The decision:	<p>Decision makers should identify the decision that has been made, for example:</p> <p>After consideration:</p> <ul style="list-style-type: none"> - it has been found that the applicant does/does not qualify for Refugee Status - it has been found that the applicant does/does not qualify for subsidiary protection 	

	<p>For the reasons which follow (if refused):</p> <ul style="list-style-type: none"> - the applicant’s claim has found not to be credible, or - whilst the applicant’s claim has been found to be credible, the applicant does not meet the definition of a refugee or qualify for subsidiary protection. 	
Identifying the basis of claim:	<p>Decision makers should identify the basis of the application:</p> <ul style="list-style-type: none"> - <i>e.g. The applicant is gay and has faced arrest and detention in his country of origin.</i> <p>Note that the purpose of identifying the basis of the application is to demonstrate that decision makers have understood the basis of the claim and are focused on the material facts of the application.</p>	
Detailing the basis of claim:	<p>Decision makers should provide a summary of the claim. Decision makers should detail those facts which relate to why the applicant left his/her country of origin; in doing so decision makers should identify:</p> <ul style="list-style-type: none"> • all of the main events and actions (what happened?); • the stated locations of all the main events and actions (where did it happen?); • the stated dates for all main events and actions (when did it happen?); • all persons involved in the claim (‘who was involved’); • the stated reasons for main events and actions, if known (why did it happen?). 	
Identifying the future fear:	<p>Decision makers should specify the applicant’s <i>future fear</i>:</p> <ul style="list-style-type: none"> - <i>e.g. On return the applicant fears arrest and imprisonment due to his sexual orientation.</i> 	
3.2. The credibility assessment:		
Identifying the material facts:	<p>The decision maker should identify all of the material facts and list them in a logical order.</p>	<p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i></p>

		<p>(See in particular the flowcharts/ checklists at pp 254 – 261)</p> <p>Excerpts of the full report have been translated into Bulgarian, Hungarian, Polish, Romanian and Slovak.</p>
<p>Country of origin information and other evidence:</p>	<p>In relation to the identified material facts, the decision maker should appropriately source and apply relevant country information to the determination of those facts; noting the date of events and the date of the information. The case worker should do the same with all other evidence available to substantiate the application.</p> <p>The case worker should as far as possible gather objective information about the situation in the country of origin. Relevant and specific country of origin information on the situation and treatment of LGBTI individuals is often lacking however and the case worker may have to rely on the applicant's own testimony as the primary and often the only source of evidence.</p> <p>Note: medical testing of the applicant's sexual orientation must not be used. Medical evidence of transition-related surgery, hormonal treatment or biological characteristics (in the case of intersex) may corroborate an applicant's personal narrative – such evidence should only be gained by consent of the individual.</p>	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (paras 64-66)</i></p> <p>APD (2013) (recast), preamble (39)</p>
<p>Assessing the material facts:</p>	<p>The decision maker should make a clear finding in relation to each of the material facts identified and state which facts are:</p> <ul style="list-style-type: none"> - <i>accepted</i> and why; - <i>rejected</i> and why; - accepted by applying the <i>benefit of doubt</i>. <p>Each fact must be considered in relation to the credibility indicators and in light of individual and contextual circumstances.</p>	<p><i>UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report (May 2013)</i></p> <p>- The flowchart at p. 261 provides an overview of the structured approach to a credibility assessment;</p>

	<p>The credibility indicators are:</p> <p>sufficiency of detail and specificity, internal consistency, consistency of the applicant’s statements with information provided by family members or witnesses, consistency of the applicant’s statements with available specific and general information including country of origin, plausibility.</p> <p>The relevant Individual and contextual circumstances are:</p> <p>the limits and variation of human memory, the impact of trauma on memory and behavior, fear and lack of trust, cultural background and customs, education, gender, sexual orientation and/or gender identity, stigma and shame, age, and other factors, including past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations, and experiences in the country of origin, transit and asylum.</p> <p>Decision makers should take into account relevant individual and contextual circumstances of the applicant in an integrated way throughout the credibility assessment (when determining whether to accept a material fact, reject a material fact or to apply the benefit of doubt).</p>	<ul style="list-style-type: none"> - See chapter 5 and summary flowchart at p. 260 for details on the credibility indicators; - See chapter 3 and summary flowchart at pp. 258-259 for details on individual and contextual circumstances.
<p>The benefit of the doubt:</p>	<p>Once it is determined which facts are accepted and why, and which facts are rejected and why, decision makers should consider whether to apply the benefit of the doubt for each remaining material fact about which an element of doubt remains. When the statements are on the whole coherent, plausible and consistent with COI, and any explanations provided by the applicant for apparent contradictions, inconsistencies, omissions and implausibilities are reasonable, the benefit of the doubt should be applied.</p>	<p>[See above - credibility assessment guidance]</p>

3.3. The analysis of the refugee definition:		
Use of COI in the legal analysis:	<p>When considering the analysis of future risk, the decision maker should source up-to-date information that reflects the experiences of LGBTI in the country of origin, which can be quite distinct from information relating to other cases. Note the analysis is whether the applicant has a well-founded fear of persecution.</p> <p>Decision makers should be vigilant to the fact that there may be a paucity of information:</p> <ul style="list-style-type: none"> - Relevant and specific county of origin information on the situation and treatment of LGBTI individuals is often lacking however and the decision maker may have to rely on the applicant's own testimony as the primary and often the only source of evidence - in particular, country of origin information may not establish whether or not laws are enforced, or the extent of any such enforcement and even if irregularly, rarely or ever enforced, criminal laws could lead to an intolerable predicament for the applicant rising the level of persecution. 	<i>UNHCR Guidelines on Sexual orientation and Gender Identity (paras 64-66, 27)</i>
Well-founded fear of persecution (future risk analysis):	<ul style="list-style-type: none"> - the well-foundedness of the fear of persecution is to be based on the assessment of the predicament that the applicant would have to face if returned to the country of origin. 	<i>UNHCR Guidelines on Sexual orientation and Gender Identity (paras 16-19)</i>
Types of persecution:	<p>Types of persecution include but are not limited to:</p> <ul style="list-style-type: none"> - threats of serious abuse and violence (physical, psychological and sexual violence, including rape); - the infliction of measures to try to change or alter sexual orientation and/or gender identity (forced institutionalisation, forced sex-reassignment surgery, forced electroshock therapy, and forced drug injection or hormonal therapy); 	<i>UNHCR Guidelines on Sexual Orientation and Gender Identity (paras 20 - 25)</i>

	<ul style="list-style-type: none"> - non-consensual medical and scientific experimentation (i.e. surgery aimed at ‘normalcy’); - detention (including in psychological or medical institutions) involving discrimination, risk of physical and sexual abuse, administrative segregation, and solitary confinement; - family or community disapproval manifesting in threats of serious physical violence or even murder by family members of the wider community (‘honour crimes’); - forced or underage marriage, forced pregnancy and/or marital rape, ‘corrective’ rape; - restricted autonomy in decision-making about sexuality, reproduction and family life; - private and family law discrimination in relation to inheritance, custody, visitation rights for children, pension rights; - restriction of freedom of expression, association and assembly; - denial of economic and social rights (housing, education, health care, deprivation of employment); - persistent community ostracism. 	
<p>Laws criminalizing same-sex relations:</p>	<p>The decision maker should consider the impact of laws which criminalize same-sex relationships:</p> <ul style="list-style-type: none"> - such laws are discriminatory and violate international human rights norms; - persons at actual risk of punishment based on the sexual orientation face persecution; - persons who wish to avoid the risk of punishment also face persecution; - where the criminal sanction is irregularly, rarely or ever enforced case workers should consider the extent to which such laws create or contribute to an oppressive atmosphere of intolerance and generate a threat of prosecution; - laws (whether applied or not in practice) may be used for blackmail and extortion purposes by state and non-state actors, promote political rhetoric leading to harm, or hinder persons to seek such harm. 	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (paras 26-29).</i></p>

<p>Right to live openly in the country of origin:</p>	<ul style="list-style-type: none"> - the decision maker should apply the principle that an LGBTI person has the right to live their sexual orientation and/or gender identity without fear of persecution. - where an applicant was able to avoid persecution in the past by concealing or by being ‘discreet’ about his or her sexual orientation and/or gender identity, this is not a valid reason to deny refugee status. The fact that an applicant can avoid risk by exercising restraint is not to be taken into account. 	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (paras 30-33)</i></p>
<p>Agents of persecution:</p>	<p>The decision maker should identify the agent of persecution:</p> <p>Non-state actors: family members, neighbours or the broader community, community members, armed or violent groups, criminal gangs, vigilantes.</p> <p>State harm: Criminalisation of behaviour, and/or physical, sexual and psychological violence perpetrated or condoned by the state or those under the control of the state (police or military).</p>	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (2012) (paras 34-37)</i></p> <p>QD (2011) (recast), Article (6)</p>
<p>The Refugee Convention grounds:</p>	<p>The decision maker should identify and assess a Refugee Convention ground:</p> <ul style="list-style-type: none"> - Refugee claims based on sexual orientation and/or gender identity are most commonly recognized under the ‘membership of a particular social group’ ground. Other grounds may be relevant depending on the political, religious and cultural context of the case; - Individuals may be subject to persecution due to their actual or perceived sexual orientation or gender identity. <p>Religion:</p> <ul style="list-style-type: none"> - Is the individual viewed as not conforming to the teachings of a particular religion? - A non-LGBTI individual who is wrongly perceived as such or who supports or is seen to support LGBTI rights may be at risk of persecution for reasons of religion. 	<p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (paras 38-50)</i></p>

	<p>Membership of a particular social group:</p> <p>A particular social group is 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.</p> <p>Sexual orientation and/or gender identity are considered as innate or immutable characteristics or as characteristics so fundamental to human dignity that the persons should not be compelled to forsake them.</p> <p>Political opinion:</p> <p>The expression of diverse sexual orientation and gender identity can be considered political in certain circumstances, particularly in countries where such non-conformity is viewed as challenging government policy or where it is perceived as threatening prevailing social norms and values.</p>	<p><i>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 (2002)</i></p>
<p>State protection:</p>	<p>The decision maker should appropriately consider state protection issues:</p> <ul style="list-style-type: none"> - state protection from non-state agent harm has to be available and effective; - laws criminalising same-sex relations are normally a sign that protection of LGBTI is not available. 	<p><i>UNHCR Guidelines on Sexual orientation and Gender Identity (paras 34-37)</i></p> <p>QD (2011) (recast), Article (7)</p>
<p>The internal flight alternative:</p>	<p>The decision maker should take into consideration all relevant factors when considering the relevance and reasonableness of an Internal Flight Alternative (IFA):</p> <p>The assessment of whether or not there is an IFA requires two main analyses: (i) the relevance analysis and (ii) the reasonableness analysis:</p>	<p><i>UNHCR 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</i></p>

	<p>Relevance analysis: IFA is not relevant where there are laws criminalising behaviour or restricting rights of individuals (i.e. medical treatment), where there is widespread intolerance, where this would lead to (re)concealment of identity;</p> <p>Reasonableness analysis:</p> <ul style="list-style-type: none">• Can the individual, in the context of the country concerned, lead a relatively normal life without facing undue hardship?<ul style="list-style-type: none">- Personal circumstances- Past persecution- Safety and security- Respect for human rights- Economic survival	<p><i>relating to the Status of Refugees (2003)</i></p> <p><i>UNHCR Guidelines on Sexual Orientation and Gender Identity (paras 51-56)</i></p>
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