



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Identifying Gaps in Protection Capacity

CIS Countries

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Introduction

This report was prepared in the context of the concluding meeting of the Follow-up to the 1996 Geneva “Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States” in Geneva on 10 October 2005.

The report examines, on a regional basis, the protection capacity of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. It is thus focusing solely on the European part of the CIS Conference participants.

The report is based on an analytical framework that was first developed in the course of the Strengthening Protection Capacity (SPC) Project. Funded by the European Commission and the governments of Denmark, Germany, the Netherlands and the United Kingdom, the SPC project is aimed at devising tools and approaches to strengthen the capacity of States to receive and protect refugees, including enhancing their means of self-reliance and expanding opportunities for durable solutions.

The countries covered by this report currently host some 263,762 asylum-seekers and refugees, most of them living in urban areas.

Over the last fifteen years the region has undergone dramatic political, economical and social changes. All countries in the region now have functioning asylum systems, all of which have been in place for less than a decade. Initially these systems handled mostly claims of asylum-seekers within the region, however, in recent years they have also received claims of persons from Central Asia and Africa. Moreover, the region is also witnessing an increase in the number of person transiting.

At the 2004 High-Level Review Meeting at Minsk, the Participating States assessed the progress made and identified remaining gaps and concerns.

The following issues were highlighted in the Chair’s conclusions:

Cooperation and Consultation

- States recognized the need to cooperate and consult on important issues.

Contribution of International, National and Civil Society Partners

- States invited international agencies to facilitate and support cooperation among the Participating States on initiatives related to the problems of refugees, displaced persons, migration and asylum issues. States also recognized the specific protection and legal mandate of the High Commissioner for Refugees’ Office, and the need for UNHCR to continue facilitate and provide for initiatives to respond to these remaining challenges.

- States welcomed the important contributions by civil society and NGOs under the CISCONF and welcomed opportunities to cooperate in developing and implementing responses to asylum issues.

Legislative and Administrative Frameworks

- States agreed to adopt specific legislative and administrative measures based on high standards of international protection and in particular to provide for:
 - fair and effective asylum system,
 - access to the territory,
 - adequate reception facilities,
 - refugee status determination process and
 - integration possibilities for those found to be in need of international protection.

Humanitarian Status

- States recognized that where appropriate humanitarian status should be afforded to individuals and groups who have been externally displaced by conflict and who do not meet the criteria for recognition as refugees under the 1951 Convention relating to the Status of Refugees, but who are nevertheless in need of international protection, in order to legalize their refuge on humanitarian grounds and provide effective protection.

Documentation

- States recognized the importance of providing refugees including children with adequate documentation.
- States agreed to cooperate among themselves and with international agencies in regard to registration and documentation of refugees and asylum seekers.

Integration

- States recognized that real opportunities for the local integration of refugees should be pursued by national governments and support by UNHCR and other relevant development agencies. Moreover, to create a favourable climate for the integration of recognized refugees, a more positive and respectful attitude towards refugees should be fostered and public awareness programmes initiated to reduce xenophobia, discrimination and intolerance.

Legal, Political and Social Environment

Demographic Profile

1) The total population of concern to UNHCR¹ in the seven countries under review was some 263,762 by the end of 2004. Armenia hosts the vast majority: comprised principally of 235,101 ethnic Armenian refugees from Azerbaijan. There are reports however, that many of these refugees have move onwards since their registration.² Other numbers of asylum-seekers and refugees located in the region are: Azerbaijan (9,837), the Russian Federation (8,138), Ukraine (4,297), Belarus (3,251), Georgia (2,570) and the Republic of Moldova (241).

2) Overall, the number of asylum-seekers in the region is low. The relatively improved stability in the region and neighbouring countries has led to a moderate inflow of persons seeking international protection with no major movements occurring over the past years.

3) Since the break-up of the Soviet Union, the process of receiving and integrating refugees has mainly seen displacement movements originating within region of CIS countries. The prevention and developing of responses to these movements were key issues in the initiation of the original CIS Conference Process. However, gradually the dynamics of displacement movements have radically changed over more recent years. The region has now become a significant transit and destination area for movements from a number of other countries. This development has lead to a need for a different understanding among countries in the region as those arriving today do no longer have the same cultural and national affiliations with the host countries.

4) The two major categories of refugees and asylum-seekers in the region therefore are:

i) Persons who fled countries that were formerly part of the Soviet Union. This group forms the majority of the refugees and asylum-seekers hosted within the region, e.g. Armenians who fled Azerbaijan, Russians of Chechen origin, persons from Abkhazia and South Ossetia. Many refugees from CIS countries seek asylum in neighbouring countries where they have ethnic, linguistic or personal ties.

ii) Persons from other parts of the world. The seven countries occupy a wide belt in the middle of the world's largest landmass, linking the European Union with Central Asia and the Middle East. Thus, the region is both a destination and a transit area for persons fleeing countries outside the region. Asylum-seekers and refugees from Iraq and Afghanistan amount to roughly 85% of the non-CIS caseload. Of the remaining 15%, many persons seeking international protection do have other ties to the region,

¹ For the purpose of this report, this figure includes asylum-seekers (registered with national authorities and/or with UNHCR), refugees and persons recognized under a temporary protection regime. It does not include internally displaced persons, stateless persons or others in a refugee-like situation.

² In March 2005 UNHCR agreed with the Armenian Department for Migration and Refugees to start a pilot census in one of the local provinces of Armenia.

usually because of study in the region or history of cooperation among communist movements, and only a small number is clearly without any link to the region.

5) Over the years, UNHCR has managed to establish a network of offices in the region, both in national capitals and other areas with a significant concentration of refugees. These offices have allowed to form partnerships with the competent local and national authorities in order to address the needs of those seeking international protection in one of the countries.

National and Administrative Framework

6) All countries in the region have acceded to the 1951 Convention and adopted national laws on refugees and asylum-seekers. Belarus, the Republic of Moldova and Ukraine have the most recent legal frameworks introduced less than 5 years ago. The Russian Federation and Ukraine are currently considering revisions to its laws, Overall, the countries are still adapting to the new legal frameworks and further developing regulations for implementation of these laws.

7) All states in the region have established administrative bodies responsible for the determination of refugee status and protection of refugees which is an important step forward in fulfilling the responsibilities under the 1951 Convention. These new administrative bodies have received significant support from UNHCR in terms of capacity-building and training but, as described below, there are still significant steps needed to improve their efficiency and effectiveness. As highlighted in the Conclusions from last year's High-Level Review Meeting in Minsk, the effective implementation of asylum systems is recognized as a key concern for all Participating States. The high turn-over of well-trained decisions makers in some countries has had a negative impact on efficiency and quality of decision-making.

Recommendations:

States, which have not already done so, to ensure that the fundamental principles of the 1951 Convention are incorporated into domestic legislation

International Instruments that Have Been Ratified

8) States in region have acceded to all major international human rights treaties and domestic legal frameworks provide for the direct application of international law, i.e. international law overrules contradicting domestic laws. However, courts in the region do, with some exceptions, not have much practice in the direct implementation of international law and tend to apply domestic laws even when they fall short of international standards.

Recommendation:

States and UNHCR to support the development of judicial practice in the direct application of international law through dissemination of best practices (court decisions from region involving direct application of international law, especially related to refugees) and training of judges in international refugee law.

Partnerships to Strengthen Protection Capacity

9) The support of non-governmental organisations (NGOs) is crucial in facilitating the reception and integration of asylum-seekers and refugees. So far the region has only seen a limited number of instances of close cooperation between the governments and local NGOs. Positive examples are the tri-lateral cooperation between the Moscow Department of Education, Ethnosphera and UNHCR to facilitate integration of asylum-seeker children in local schools and a number of cooperation agreements between the Government of the Republic of Moldova and UNHCR implementing partners as well as other NGOs. In Belarus, the Ministry of Health, the Belarusian Red Cross and UNHCR concluded an agreement on tri-lateral cooperation with regard to the provision of medical help to asylum-seekers and refugees. Furthermore a MoU on border monitoring was signed between the Belarusian State Committee of Border Troops, two national NGOs and UNHCR. Many of these agreements could serve as effective models for similar cooperative arrangements elsewhere.

10) For its part UNHCR has been working closely with NGOs to address the protection needs, including assistance needs of persons of concern. However, there is concern that national NGO's have often less visibility and limited access to funds beyond UNHCR. UNHCR together with certain international NGOs are promoting training to widen fundraising activities.

11) UNHCR is also engaged with other international agencies in close partnerships. This includes the European Union and other lead agencies of the CIS Conference process, the OSCE, the Council of Europe and IOM. These partnerships, formed in the context of the CIS Conference and the Soderkoping process focus primarily on asylum and migration issues in the Western CIS region. An important result of this cooperation between the EU, UNHCR and the Western CIS countries is the establishment of Temporary Accommodation Centres (TACs) in the Republic of Moldova and Ukraine.

12) There is considerable variation in national legal basis for UNHCR's supervisory role under Art. 35 of the 1951 Geneva Convention on the Status of Refugees. Only Azerbaijan and the Republic of Moldova's legal systems mention Art. 35. Nevertheless the region has a number of good practices in UNHCR/State cooperation, including joint RSD (Armenia), UNHCR's unimpeded access to persons of concern in detention (Armenia, Azerbaijan, Belarus), joint working groups on draft legislation (Azerbaijan), access to individual case files (Republic of Moldova) and the possibility of UNHCR assisting in the examination of the asylum request throughout the procedure (Republic of Moldova).

Recommendations:

States to examine how to further engage NGOs in providing protection to refugees and asylum-seekers.

UNHCR to continue to strengthen partnerships for protection and awareness-raising with NGOs, other actors of civil society, as well as refugees.

States, UNHCR and NGOs to identify and work on practical modalities to ensure better cooperation between UNHCR and States Parties in strengthening implementation of the 1951 Convention and 1967 Protocol, and in facilitating UNHCR's duty to supervise international refugee instruments.

Host Environment

13) Host populations are generally more receptive to the integration of refugees of similar ethnic origin. However, with the changing nature of refugee and migration movements involving very different origins, a major issue in a number of countries relates to the increase in ethnically related violence and xenophobia. There are little or no government sponsored public awareness programmes on tolerance and combating xenophobia in the countries in the region.

14) Such acts of ethnically based violence has been rising significantly and will need to be addresses by States in close cooperation with NGOs, the press as well as other civil society organizations to support and promote increased tolerance. UNHCR has worked with States and NGOs to develop various projects for encouraging tolerance in the region, including a course on multicultural education in Belarus, a toolkit for teachers in the Republic of Moldova and radio programming in the Russian Federation.

Recommendations:

States, UNHCR and other relevant actors to foster a positive and respectful attitude towards refugees, including through

- *Encouraging political leaders to uphold the basic values underpinning the 1951 Convention*
- *Making better use of and more broadly distributing public awareness materials which can sensitize civil society to the situation of refugees, as well as educational material.*

States to develop public awareness programmes, with the participation of refugees, which focus on the positive social and cultural contributions that refugees can make.

States to take measures to combat racism, racial discrimination and xenophobia directed against asylum-seekers and refugees.

Refugee Issues and National Regional Development Agendas

15) Refugee and asylum issues do get some attention in development frameworks of countries with large numbers of refugees, IDPs, or returnees concentrated in a geographic area, for example in Azerbaijan, Georgia, Armenia and the North Caucasus region of the Russian Federation.

16) In countries and regions with relatively small numbers of refugees and asylum-seekers, or where they live scattered across urban areas, development initiatives have generally not yet started to include them in their planning.

Recommendations:

States to continue allocating development funds to programmes simultaneously benefiting refugees and the local population in host countries, giving special attention to areas where, due to inter alia a low refugee population, this has not been done in the past.

States to consider including refugee-hosting areas in their national development plans, and UNHCR to encourage multilateral and bilateral development partners to extend support for such initiatives.

Admission

Admission Policy and Practice

17) Most countries have regulations to ensure cooperation between border guards and migration authorities. These are designed to ensure that asylum-seekers arriving at the border – with or without documents providing for legal entry – are referred to the migration authorities for consideration of their asylum claim. Unfortunately these regulations are often not followed in practice, leading to poor coordination and cooperation between border guards and migration authorities.

18) Other problems include:

- National laws relating to border crossings do not reflect international refugee law principles
- Lack of training for border guards in refugee law
- Absence of migration authorities at borders (lack of points of immigration control (PIC))
- Inadequate communication facilities between border guards at land/sea border entry points and migration authorities.

19) As a result, border guards do not systematically report all asylum applications to the relevant migration authorities in a timely fashion. When admission to the territory is denied, there may be a serious risk of refoulement.

Recommendations:

States to review its reception arrangements and to equip border officials with clear guidance on the appropriate standards of treatment of asylum-seekers and ensure that there are adequate legal and administrative procedures in place for the referral of asylum-seekers to competent asylum and migration authorities.

UNHCR to continue to monitor the admission and reception of asylum-seekers in the host countries and to work with States on addressing any difficulties asylum-seekers may currently encounter.

Non-Refoulement

20) Notwithstanding the existing legal provisions against refoulement in the region, there are concerns that administrative procedures do not ensure that this principle is adhered to in practice. In particular, the lack of assured access to asylum systems by asylum-seekers, as well as the absence of adequate documentation of those who do get access, increases the risk of arrest and removal (see also the relevant chapters on Admission above and Registration below). One country (Russian Federation) does not systematically document persons appealing denial of their asylum claim on admissibility grounds, while another (Ukraine) experiences delays in issuing asylum-seeker certificates to persons in the appeal procedure. Belarus has only recently established a practice of registering rejected asylum-seekers during the appeal

procedures. The unclear legal provisions on the subject that previously hindered such registration are, however, still in place.

Recommendations:

States to ensure that the principle of non-refoulement is properly embedded in the general legal framework, including in the laws on state borders and border control and other related laws such as regulations on extradition.

States to ensure that the principle of non-refoulement is respected in practice, including by putting in place necessary safeguards, such as adequate documentation against arbitrary detention and risk of expulsion.

UNHCR Access

21) UNHCR has only in some countries unimpeded access to asylum-seekers, including new arrivals. The refugee law of the Republic of Moldova and an agreement with the Governments of Ukraine and Georgia provide the legal basis for UNHCR's access.

22) In practice, however, UNHCR encounters numerous difficulties with regard to access to new arrivals in most countries. These include: cumbersome procedures for arranging access, causing undue delay (airport in the Republic of Moldova, the Russian Federation, Ukraine); the problem of extremely large borders (Russian Federation); lack of regular UNHCR or NGO access to border areas (throughout the region).

Recommendations:

States to ensure that UNHCR has unimpeded access to all asylum-seekers at all entry points, including through appropriate legal provisions and efficient and effective practices.

Identification, Assessment and Treatment of Urgent Protection Needs

23) Migration authorities in the region lack the means for identifying and responding to urgent protection needs. Migration authorities are, by themselves, not in a position to address the various needs of vulnerable asylum-seekers, such as unaccompanied minors, victims of violence, including Sexual and Gender-Based Violence (SGBV), single parents, and the destitute. Data on specific protection needs is not gathered and report mechanisms are not in place to refer any such cases to the competent bodies. In light of this it is very difficult to assess the scale of the problem and there is a strong concern that many refugees and asylum-seekers may have serious needs that are not being adequately addressed.

24) In the absence of effective channels for reporting urgent protection needs to the state authorities, only few response mechanisms have been put in place - for example in the Republic of Moldova where a needs assessment is done at the stage of registration by the authorities. In general, there is a concern that the lack of

cooperation between the migration authorities and other government and non-governmental agencies on refugee issues further exacerbates the problem.

25) A positive example of cooperation would be the conclusion of a Memorandum of Understanding between the Armenian Migration Service and the Armenian Red Cross Society to carry out needs assessments of newcomers, identify vulnerable persons, and refer them to appropriate government or NGO service-providers.

26) Unaccompanied minors (UAMs) in the region face particular difficulties, not only with accessing appropriate care arrangements, but also with gaining access to the asylum system. In the region, only Belarus and the Republic of Moldova have established special procedures including provisions for appointing guardians for UAMs. In the other countries, legal guardians are not appointed for UAMs because of lack of administrative procedures and experience in appointing a guardian for foreign, sometimes undocumented, minors. Without a guardian, UAMs are not allowed to apply for asylum. This gap constitutes a serious infringement of the rights of one of the most vulnerable categories of asylum-seekers.

27) Azerbaijan is the sole country engaging in family tracing for unaccompanied or separated children.

Recommendations:

States to introduce or, as necessary, enhance safeguards addressing special needs based on gender or age, as well as those of victims of torture or persons with disabilities.

States and UNHCR to undertake consultations on ways to better manage the challenge of claims to refugee status from unaccompanied and separated child asylum-seekers, in particular to set in place mechanism to guarantee UAM effective access to the asylum procedures.

States and UNHCR to work to ensure that claims lodged by female and child asylum-seekers take properly and sensitively into account gender and age specificities, including forms of persecution which have specific gender or age-related aspects.

States, UNHCR and other partners to ensure that unaccompanied and separated child asylum-seekers and refugees are assisted in being reunited with their families

Support to Meet Basic Necessities of Life

28) The laws in most countries guarantee a measure of social protection for asylum-seekers. Usually these laws stipulate that shelter, food and emergency medical care will be provided for. It is, however, rarely the case that the countries are able to implement these laws fully. Shelter is a particular problem. The region's reception facilities for asylum-seekers are developing slowly. So far five countries have temporary accommodation centres (Armenia, Belarus, Republic of Moldova, Russian Federation and Ukraine). The Russian Federation's temporary accommodations centres (TACs) are only intended to host recognized refugees put are underutilized

because of their remote locations. Furthermore, there are no procedures in place that would facilitate the transport of asylum-seekers to these regions. Azerbaijan has so far only established one short-term asylum-seeker accommodation facility at the border. As a result, only a small fraction of the region's asylum-seekers can be accommodated in TACs.

29) In the Western CIS countries, actual access to social support is linked to TACs. In the Republic of Moldova and Ukraine TAC residents have access to shelter, food and basic medical care, but asylum-seekers living outside these centres are often left without any assistance. Many new arrivals are therefore left to rely on themselves, with only a small number being supported by UNHCR and other humanitarian organizations, to meet their basic needs.

Recommendations:

States to increase efforts to provide the operational and financial resources to cover the basic necessities of life of newly arrived asylum-seekers and make more effective use of the existing accommodation facilities.

Registration

Individual Registration

30) Throughout the region, there is a general practice of registering only asylum-seekers who meet various admissibility criteria (Azerbaijan, Georgia, Russian Federation, Ukraine). Some countries, for example, specify that an application for asylum must be made within a certain time period (ranging from 1-5 days) after crossing the border. Persons who apply after expiration of this time limit can be denied registration, which would put them at serious risk of refoulement. Some countries apply very strict interpretation of safe-third country rules and deny registration to any person who transited a country that is signatory to the 1951 Convention. Some countries deny registration on other, not clearly articulated grounds. In Ukraine, 70% of the asylum claims are rejected on admissibility grounds and the asylum-seekers remain unregistered.³ Denying registration on admissibility grounds constitutes a serious protection gap as unregistered asylum-seekers are not documented and left at risk of refoulement and/or exploitation. Exceptions to this pattern are Armenia and the Republic of Moldova, both of which have a good practice of registration of all applicants.

31) Once an asylum-seeker is accepted into the procedure, however, the authorities in the region have a good record of carrying out individual registration for men and women.

Recommendations:

States to review the current practice of the use of very restrictive admissibility grounds in order to ensure that asylum-seekers have access to the asylum procedures and a material assessment of their asylum claim.

Registration and International Standards

32) Several countries in region lack clear registration procedures (Armenia, Russian Federation, Ukraine). Furthermore, the high turnover of registration staff means lack of experience and an ongoing need for training. Most countries have a sufficient number of female registration staff available, and only in one country (Ukraine) do female asylum-seekers have problems requesting registration by female staff.

33) Some countries use UNHCR's database system (RICS) at least in part (Republic of Moldova, Ukraine), but most lack sophisticated database systems for storing and sorting information about asylum-seekers. This raises several problems. It makes it impossible to fully address the needs of different groups of refugees, such as women, children and the elderly. The absence of regularly updated data also means that it is impossible to account for asylum-seekers and refugees who are no longer in the country. It also makes it difficult to target integration strategies effectively.

³ Even those asylum-seekers who manage to registered with the State Committee for Nationalities and Migration (SCNM) may still face difficulties in registering their stay with the Ministry of Interior, thereby continuing to be under threat of *refoulement*.

Recommendations:

States to ensure that clear registration procedures are in place and that those carrying out registration are adequately trained, including in gender and age-sensitive interviewing techniques, benefiting from the expertise and support of UNHCR, where appropriate.

States to ensure that questions of confidentiality, safe location, sufficient number of female personnel, separated children and others are efficiently addressed by the registration process in the countries.

States and UNHCR to consider developing operational standards and guidelines with regard to registration and population data management.

Legislative Framework for Determining Protected Status

Group Determination

34) The Russian Federation and Belarus have laws and ministerial resolutions respectively, that allow for the determination of the place and conditions for a temporary accommodation of refugees in a case of mass influx. The legal status of these persons, however, is not spelled out in this provisions. The law of the Republic of Moldova foresees the possibility to grant temporary protection to asylum-seekers in mass influx situations.

35) Prima facie refugee status is only recognized in Armenia, Azerbaijan and Georgia.

Recommendations:

States to review the current legal or administrative framework with the aim of ensuring adequate protection mechanisms in case of large scale and group influxes.

Individual and Fair Asylum Procedures

36) There are several problems associated with the Refugee Status Determination (RSD) procedures in the region, ranging from denial of access to restrictive interpretations of the refugee definition.

37) In many countries asylum-seekers of a certain ethnicity are denied access to RSD procedure. In other cases the absence of documents confirming identity and/or prior residence bar (Georgia, Russian Federation, Ukraine) or seriously hamper (Belarus) admissibility to the asylum process.

38) Generally, asylum-seekers are often not provided with information on the process in a language they understand. UNHCR, in many countries through cooperation with the authorities, bears the responsibility of providing interpretation services for asylum-claimants during the refugee status interview.

39) Long delays also plague many asylum systems. In the Russian Federation and Ukraine, for example, there is a large backlog of asylum cases, resulting in cases to take many months and in some instances even years to be considered. Delays can also be based on the person's ethnicity with claimants of some ethnic groups facing longer processing times than others.

40) Some countries do not apply a full and inclusive interpretation of the refugee definition and thus have an unduly high level of rejection on the merits (Russian Federation, Ukraine). Georgia's Law on Refugees does not contain the 1951 Convention definition of a refugee. Instead of using the concept of *fear of persecution* reference is made to a past persecution experience, which narrows the scope of the

definition considerably. In a number of cases rejections were also based on an overly broad interpretation of the safe third country rule.

41) Belarus and the Republic of Moldova are the only countries in the region that are providing rejected asylum-seeker with written reasons for the decision, in the case of the latter also containing information on the right and terms of appeal. Though Georgia is also issuing a notification to rejected asylum-seekers, the same generalized reason for rejection is given to every individual without distinction.

42) Unaccompanied minors are in an especially precarious situation, as they do not have the means to access the asylum procedures without a legal guardian and countries in the region, with the exception of Armenia, Belarus and the Republic of Moldova, do not have mechanisms in place to appoint a guardian for unaccompanied minors seeking asylum (see also chapter on Urgent Protection Needs above).

43) Only Armenia, Azerbaijan and the Republic of Moldova allow for the presence of UNHCR during the government's RSD interviews. In addition, UNHCR was recently given a monitoring role in the government refugee status procedures in Azerbaijan.

Recommendations:

States to ensure that the merits of each refugee claim is examined by a competent organ, applicants are not excluded on formal grounds and that decisions are taken in a timely manner, based on a full and inclusive interpretation of the refugee definition contained in the 1951 Convention and the 1967 Protocol.

States to ensure that asylum-seekers and refugees have access to relevant information in a language they understand and that the services of an impartial and qualified interpreter are provided.

States to provide asylum-seekers and refugees with the possibility of having access to free legal advice and unhindered access to UNHCR.

States to ensure that the special needs of female and minor applicants, including separated children are met during the status determination process.

States to issue written reasoned decisions if a claim is rejected or declared inadmissible as well as information on where and within what time frame to lodge an appeal.

States to ensure the possibility of an appeal to an independent body and the first instance decision to be suspended until the final appeal is determined.

States to consider providing UNHCR with an advisory role during the decision-making process, including by taking into consideration its advice on the interpretation of the refugee definition.

Country of Origin and Legal Information and Analysis

44) The vast majority of country of origin information (COI) is available in English only. While most eligibility officers in the region can read Russian, they do not read other foreign languages, especially English. The system for translating and distributing COI in Russian is ad hoc and decentralized. As a result, many migration authorities lack COI to assist them in correctly assessing refugee claims.

45) Migration authorities have not established focal points for the collection and management of COI and eligibility officers lack training in COI research.

Recommendations:

States and UNHCR to improve and, where appropriate, establish systems of research, translation and distribution of COI, including in languages that are commonly used throughout the region, especially Russian.

States and UNHCR to engage in the training of eligibility officers in the research and use of up-to-date COI.

Complementary Forms of Protection

46) Only Armenia, Belarus, the Republic of Moldova and the Russian Federation have established complementary forms of protection. Armenia grants temporary protection on prima facie basis which was recently granted to persons fleeing the instability in Iraq. The Russian Federation grants temporary asylum after review of an individual's case, usually on the basis of a person's medical condition rather than events in the person's country of origin. The Republic of Moldova has recently adopted a law that provides protection to persons whose life and freedoms are at risk but who would not fall within the criteria of the 1951 Convention.

47) In 2001 Azerbaijan und UNHCR concluded an official agreement, granting temporary protection to Afghan nationals in Azerbaijan. A similar ad-hoc solution was found in 2002 for asylum-seekers from Iraq. Ukraine cancelled previous resolutions by the Government regarding temporary protection for asylum-seekers from Chechnya and Abkazia, leaving those two groups in an unclear legal status. Currently neither Azerbaijan nor Ukraine has a law that would institutionalize a complementary form of protection in the country.

48) In a number of cases refugees who would fall within the 1951 Convention criteria are granted a complementary form of protection only, thereby depriving them of some of their basic rights, including the possibility of local integration.

49) Where they exist, complementary forms of protection follow different procedures than those in place for Convention refugee status, sometimes leading to confusion on the side of the authorities.⁴ Belarusian law, for example, contains contradictory

⁴ For the legal status granted by the different forms of protection, see also below, chapter on Recognition in Law.

provisions on complementary protection. Georgia lacks any forms of complementary protection regimes.

Recommendations:

States to consider the merits of establishing a single procedure in which there is first an examination of the 1951 Convention grounds for refugee status, to be followed, as necessary and appropriate, by the examination of the possible grounds for the grant of complementary forms of protection.

Protection from Violence, Coercion or Deliberate Deprivation

Mechanisms to Prevent and Respond to Sexual and Gender-Based Violence (SGBV)

50) There is a relatively high incidence of domestic violence and early/forced marriage in the region. Most countries do not have specific legislation to combat domestic violence and do not use criminal law to prosecute such cases. Domestic violence is generally seen as a matter for families to resolve and enforcement agencies do not regard the matter as within their responsibilities.

51) Local NGOs have often a very important role in providing counselling and support in these situations. In cooperation with UNHCR, a number of them have gained some capacity to prevent and respond to SGBV in the form of counselling services and shelters for victims. However, the lack of local resources for assisting women (such as counselling and women's shelters) and punishing perpetrators hampers effective responses.

Recommendations:

States, UNHCR and other actors to adopt measures to ensure that gender and age-sensitive prevention and response mechanism, including remedial actions, to sexual and gender-based violence and exploitation are an integral part of all programmes in all refugee contexts, and include relevant educational and awareness-building programmes targeting men, women and children.

States to take particular measures to raise awareness within law-enforcement agencies on the issue of SGBV.

Programmes to Protect Children from Abuse and Exploitation

52) Early child marriage and child labour are among the chief concerns regarding the welfare of child refugees.

53) All countries have strong child protection systems, partially as a legacy of the Soviet legal and administrative system. However, these systems do not always extend sufficient protection to refugee children, partially due to the lack of awareness and registration of their particular concerns.

54) Together with local implementing partners, UNHCR has worked within the region to develop a capacity to monitor and respond to the needs of refugee children. The dispersed refugee population makes adequate monitoring difficult though.

Recommendations:

States, UNHCR and partners to set in place measures to ensure that the specific protection needs of child asylum-seekers and refugees are incorporated in national

child protection programme development, implementation, monitoring and evaluation.

States, UNHCR and humanitarian partners to continue or set in place training programmes on the rights of refugee children, drawing as appropriate on the Convention on the Rights of the Child, other relevant standards of human rights and international humanitarian law and UNHCR's guidelines on the protection and care of refugee children.

UNHCR to ensure continuous dissemination and to oversee implementation of the guidelines on the protection and care of refugee children.

Legal Recognition of Protected Status

Recognition in Law

55) Generally, refugees and asylum-seekers (including those under temporary asylum status in Armenia and the Russian Federation) are given a clear legal status under the law. Their rights and obligations are usually spelled out in the relevant regulations. In Armenia there is a lack, however, on provisions regarding the granting of derivative status to family members as well as some confusion on the practical application of the temporary asylum regime. In Georgia, the legal status of prima facie refugees remains unclear as well as the legal mechanism that would give effect to the right of acquisition of citizenship. Certain categories of asylum-seekers, for example those being arrested for crossing the border without proper documentations or for staying in the country without registration, do not have any specific rights under the law on refugees in Ukraine, leaving them in an especially vulnerable situation.

56) Refugees in Belarus have to undergo an annual re-registration process, however maintaining their legal status as such. In Georgia and the Russian Federation, refugee status is granted for one and three years respectively, extendable for each consecutive year. Other countries have not set in place any time limitations on the legal status of refugees.

Recommendations:

States to ensure that all asylum-seekers, refugees and persons under other forms of protection are accorded a clear legal status by the law.

States to consider reviewing the current time frames for which refugee status is granted, bearing in mind that persons residing in a host country should not unduly be kept in a status of uncertainty which could have a negative impact on their ability to integrate into the host society.

Provision of Documents Confirming Legal Status

57) Documentation of recognized refugees is generally adequate in the region. An exception is Georgia where the Ministry of Justice has not confirmed that the refugee card, currently issued by the Ministry of Refugees and Accommodation to Chechen refugees only, is an official identity document.

58) Documentation of asylum-seekers is more problematic. Some asylum-seeker documents in the region have insufficient information about the identity of the asylum-seeker (Georgia) or his/her rights in the country (Armenia). There are delays in issuing asylum-seeker documents in both Ukraine and the Russian Federation. In the Russian Federation it is also difficult to ensure confirmation of residence registration on an asylum-seeker document. Consequently, asylum-seekers are subjected to administrative fines and detention for violating the registration regime.

59) As mentioned above, refugees and asylum-seekers from Chechnya face special difficulties in Azerbaijan as they are not officially recognized and are thus not eligible for any documentation by the authorities.

Recommendations:

States to provide asylum-seekers and, where this has not been done yet, refugees with documentation that allow for a clear identification of the bearer and ensure that these documents are recognized by other state authorities.

Documents Confirming Civil Status

60) In Azerbaijan and the Republic of Moldova all children born on the territory of the State are eligible for the respective citizenship upon legal birth registration (but see below regarding the difficulties with regard to effective registration).

61) In some countries,, refugees and asylum seekers encounter difficulties in registering births as parents often lack the required documentation and/or residence registration, leaving children without a clear legal status (Azerbaijan, Russian Federation, Ukraine). Belarus has a good history of registering children born within its territories, irrespectively of the legal status of the parents.

62) In regard to marriages, a foreigner must show proof from his/her country of origin that s/he is single before a marriage will be registered. Refugees however are generally not required to obtain this proof of single status from their home countries since marital status is stated in the person's refugee document. An exception is Georgia, where (in contravention of Art. 25 of the 1951 Convention) recognized refugees are required to approach their embassy (if available) for such proof.

63) Asylum-seekers, on the other hand, are required by some countries to obtain proof of single status in order to marry. This requirement, as well as their lack of documentation in some countries, hinders the full enjoyment of the right to marry by asylum-seekers.

64) Common law marriages are not recognized by law in the region. Children born of single mothers, however, do acquire the same rights as children born of married parents.

Recommendations:

States to revise the laws and regulations governing the recognition and documentation of civil status and to provide necessary documents relating to civil status (e.g. birth, marriage, divorce, death), benefiting from the support and cooperation of UNHCR, where appropriate.

Information Dissemination on Rights and Responsibilities

65) UNHCR, partially in cooperation with local authorities, is providing information on the asylum system, as well as refugee rights and responsibilities in the respective countries to asylum-seekers and refugees in a variety of languages.

Recommendations:

States to strengthen their information policies for asylum-seekers and refugees, providing them, in a language they understand, with a clear understanding on their rights and responsibilities, including the quantity, type or method of services and assistance affecting them.

Free Movement

Restrictions on Freedom of Movement

66) Refugees, and in most cases asylum-seekers, are accorded the same rights of movement as apply to local populations.

67) Armenian, the Republic of Moldova and Ukrainian laws foresee the possibility of placing restrictions on the movement of asylum seekers, however no such restrictions are currently in place. In Belarus, asylum-seekers can visit regions other than the one where they filed their asylum claim upon official permission only.

Travel Documents

68) Several countries issue Convention Travel Documents (CTDs) although refugees do encounter administrative problems in receiving them in accordance with Article 28 of the 1951 Convention. In Ukraine, for example, refugees must travel to Kyiv to obtain a CTD. Similarly, only the Federal Migration Service in Moscow can issue CTDs to refugees in the Russian Federation, thereby making it extremely difficult for refugees living outside this area to obtain such documentation.

69) Other countries like Georgia do not issue CTDs. Moreover, in Georgia refugees, who travel abroad temporarily, have their refugee cards confiscated⁵ at border crossings and, according to law, risk losing their refugee status.

70) In Belarus, refugees can obtain travel documents especially designed for refugees and stateless persons. The law of the Republic of Moldova provides for the provision of CTDs, but these regulations are still awaiting implementation on the ground. Azerbaijan has recently announced that it would start issuing CTD to recognized refugees soon.

Recommendations:

States to put in place policies to ensure that that right of recognized refugees to international travel documents is respected and effectively.

Arbitrary Arrest and Detention

71) In several countries asylum-seekers who have attempted to enter the territory without proper documentation are detained at the border. Conditions in these facilities are generally poor. Asylum-seekers rarely enjoy minimum standards of treatment (information on reason of arrest, access to free, impartial legal assistance and interpreters, detention not unduly prolonged and subject to individual review).

⁵ This is happening on a systematic basis for *prima facie* refugees of Chechen origin.

72) Once in the country, asylum-seekers and refugees are also at risk of arbitrary arrest and detention in a number of countries. In the Russian Federation, difficulties in obtaining documents and residence registration expose asylum-seekers to administrative fines, detention and deportation. Moreover, those of non-Slavic appearance are often singled out for document checks.

73) UNHCR has also expressed concerns about arrests of prima facie refugees in Georgia during security sweeps in the Pankisi Valley.

74) UNHCR intervenes with local authorities in the different countries to secure release of arrested asylum-seekers and refugees, sometimes requiring the assistance of a private lawyer to challenge detention in the courts.

Recommendations:

States to ensure that asylum-seekers and refugees are properly documented, that the rights of these persons are respected by the law-enforcement agencies and that arrests and detention are carried out in accordance with the law and relevant international and European human rights standards.

Assistance in Meeting Protection Needs

Provision of Food, Water and Clothing

75) Due to the overall economic situation in the countries concerned, national welfare systems are generally under-financed, resulting in some instances in difficulties for even the local population to have sufficient access to adequate food, water and clothing. This creates a challenge in establishing a system of social protection that is sufficient to help asylum-seekers and refugees live in dignity, while not treating them more favourably than the local population.

76) Two States (Armenia and Ukraine) provide modest assistance (food and non-food items) to the relatively small number of asylum-seekers living in TACs and a third State (Republic of Moldova) is currently engaged in ensuring additional assistance to asylum-seekers through partner NGOs. Asylum-seekers in Belarus receive a small monetary assistance upon arrival, in general, however, asylum-seekers in the region who live outside these centres do not receive any assistance from the State for food and/or clothing. UNHCR has been trying to fill this gap in assistance to asylum-seekers for the past ten years.

77) In Armenia, the Republic of Moldova and the Russian Federation recognised refugees are entitled to support from the national welfare schemes on the same terms as citizens. In practice, however, many refugees encounter difficulties in accessing this support as social services agencies are not always aware of the legal status and special needs of recognized refugees. Application procedures to receive support are complex and interpretation services are not available. The lack of intra-governmental cooperation in some countries exacerbates these problems.

Recommendations:

States to enhance efforts to provide asylum-seekers with support to cover the basic necessities of life and to ensure that refugees have effective access to national welfare institutions.

Immediate Shelter and Long Term Housing

78) With the exception of Moldova, there is a lack of temporary accommodation and longer term residences for asylum-seekers. In regard to temporary accommodation, Armenia, Belarus and Ukraine have TACs, but most of them do not have sufficient space to accommodate new arrivals. According to the law, the current TACs in the Russian Federation are for recognized refugees only and are located in areas which would be too remote for asylum-seekers to access.

79) As a result, the majority of asylum-seekers must rent apartments on the private market. The need to acquire the necessary financial means for these apartments, while at the same time facing restriction in terms of access to the labour market, forces many asylum-seekers and refugees into informal economic activities. Many asylum-

seekers and refugees live in overcrowded urban apartments and in the Ukraine and the Russian Federation homelessness amongst them is a concern.

80) Some refugees in Armenia, Georgia (Pankisi) and the Russian Federation (North Ossetia) are housed in collective centres, partially subsidized by the Governments. However, refugees hosted in Pankisi have recently come under threat of eviction following the privatisation of some of these centres. Although some of the buildings in the different countries are former hotels or dormitories, others were never intended for human habitation. Most of the region's collective centres have been inhabited by refugees for more than a decade without significant investment in their upkeep and repair. Conditions are therefore extremely poor.

81) It should be mentioned, that housing is a serious problem for the local population. In light of this, it has been difficult to ensure that recognized refugees receive equal treatment in access to housing. There are, however, positive developments worthy of note. In Belarus, for example, UNHCR has assisted in the renovation of apartments in the Minsk region to house recognized refugees. The Armenian government has been providing buildings for renovation during an ongoing UNHCR housing project and in 2005 has started to allocate funds to provide shelter to refugees in need in 9 of the 11 provinces. The Ukrainian government has recently begun giving vulnerable refugees access to temporary housing on the same basis as nationals.

82) Because registration at a place of residence is a pre-condition for the exercise of other benefits in several countries, access to housing has for certain refugees a much wider impact on the enjoyment of their rights in the host countries (see also chapter on Civil Status above). A situation that would secure stable housing, including resident registration where necessary, would thus also solve the question of access to social rights, including medical care.

Recommendations:

States in cooperation with UNHCR and other partners to ensure that immediate housing needs of asylum-seekers and refugees are met.

States to examine how the promotion of secure legal status and residence rights would help refugees to obtain a higher degree of economic self-reliance, which would also have a positive impact on their housing situation.

States and UNHCR to encourage international development partners to extend support to development plans designed to address the precarious housing situations in refugee-hosting areas.

Access to Primary and Curative Health Care

83) Recognized refugees in the region generally have access to the state's health care facilities on the same basis as nationals (Armenia, Georgia, Republic of Moldova, Russian Federation, Ukraine). According to the law, these health-care systems should provide services free of charge. However in practice, persons often have to pay fees for using state health care facilities. Such practice can create a considerable burden for

refugees and asylum seekers. Belarus distinguishes between refugees from CIS countries and refugees from elsewhere. The former are provided free of charge emergency services only. Refugees from other countries benefit also from free ambulatory medical services.

84) In the Russian Federation and Belarus, access to public health systems depends on being registered as a resident in a community. Homeless refugees or refugees whose landlord refuses to assist in the registration cannot gain access to these systems.

85) With the exception of Armenia, asylum-seekers have very limited access to medical services. Belarus, the Republic of Moldova and the Russian Federation give asylum-seekers only emergency medical care and Georgia has no provisions on medical care for asylum-seekers at all. Azerbaijan has put regulations in place that would grant asylum-seekers access to health care, however these regulations are still awaiting implementation. UNHCR has made efforts to fill these gaps by providing primary and preventative medical services to asylum-seekers in several countries in the region (Belarus, Russian Federation and Ukraine).

Recommendations:

States to review the current regulations with the view of providing asylum-seekers access to primary curative and preventative health care services.

States to take steps to provide all recognised refugees, irrespective of their country of origin, access to health services on the same terms as nationals.

Primary and Secondary Education

86) The region has strong education systems, reflecting the high value that is attributed to education in the national societies. Refugee and asylum-seeker children have access to free primary education, respecting the countries' obligations under the CRC and the 1951 Convention. In addition, refugee children have also free access to secondary education throughout the region.

87) Problems with regard to education are mainly related to high drop-out rates among adolescents. Boys are often in a situation where they are required to contribute to their family's income and girls in some communities are exposed to the traditions of early marriage.

Equal Benefit and Protection of the Law

Access to Effective Remedies

88) Refugees and asylum-seekers are equal before the law and entitled to equal protection without discrimination. While all individuals do, in principle, enjoy free access to the courts, practical obstacles such as the absence of free legal aid or interpretation in court hearings can limit access in practice. Local NGOs have developed capacity to fill some of these gaps but many of these organizations have to rely almost exclusively on financial assistance from UNHCR for these activities.

Recommendations:

States, UNHCR and other partner to ensure that free access to courts and legal remedies is not impeded by the lack of free legal aid or competent interpreters.

Fair and Public Hearings without Discrimination

89) There are concerns that law enforcement agencies in at least one country have an unduly high influence on access to and the administration of justice. Some reports suggest that this might lead to a widespread practice of penalisation of bona-fide asylum-seekers.

Recommendations:

States to ensure that all national authorities, the judiciary as well as the executive, fully respect the principles of impartiality and non-discrimination.

Self-reliance

Educational and Vocational Programmes

90) The refugee laws of Armenia, Azerbaijan and the Russian Federation give recognized refugees the right to vocational training. In practice however, no State in the region provides vocational training or language training. UNHCR provides some vocational and language training. In cooperation with UNHCR, NGOs were also able to develop capacities to engage in such training activities.

91) The absence of State sponsored vocational and language training reflects the lack of an overall strategy for facilitating the integration of refugees. Training refugees in the local language as well as in vocational skills are essential to help refugees to integrate and become productive members of the local society. Migration authorities and other governmental and non-governmental organizations should intensify their cooperation to promote activities to help refugees integrate in the local society (see also the chapter on Local Integration below).

Recommendations:

States to consider developing possibilities for education, vocational and language training for refugee men and women.

States and UNHCR to look at integration strategies, facilitating local integration and self-reliance of refugees.

Access to Wage-earning Employment

92) Recognized refugees have the right to work, however, often they must have identification documents and/or proof of residency registration to do so. The problems in obtaining these documents outlined earlier, mean that many refugees tend to work in the informal sector. Even for those who have the necessary documents, employment in the formal sector can be difficult to find and States do not have job placement programmes or employer incentive programmes to assist refugees.

93) The right of asylum-seeker to work varies throughout the region. Some countries grant the right to work (Belarus and, for asylum-seekers that have been admitted into the asylum procedure, Russian Federation), in practice however the right may be difficult to exercise because of the difficulty for asylum-seekers in obtaining residence registrations.

94) The Republic of Moldova offers asylum-seekers the right to work if they can establish that they would otherwise not have sufficient means to secure their living. Ukraine limits the right to work to temporary employment. Overall, there is a need for greater clarity on the rights of asylum-seekers to employment, as well as procedures to ensure that asylum-seekers are able to utilize this right to provide an adequate standard of living for themselves and their families.

Recommendations:

States to establish clear legal and administrative frameworks to ensure that refugees and, as appropriate, asylum-seekers have effective access to wage earning employment.

Self-employment Opportunities

95) Recognized refugees in the region have the right to self-employment and in practice many refugees are independent traders on local markets. There are also a few activities in the region to encourage entrepreneurship by refugees, thereby setting a standard for the region. In Armenia, refugees may benefit from a micro-credit program supported by UNHCR. In Ukraine, UNHCR works with the ProCredit Bank Ukraine to enable refugees to obtain loans on the same conditions as Ukrainians and in Belarus, UNHCR has helped to launch two social enterprises through cooperation with community organisations.

Recognition of Foreign Diplomas

96) Foreign diplomas are generally recognized. Many States are party to the 1997 European Convention on the Equivalence of Diplomas and the European Convention on the Recognition of Qualification concerning Higher Education in the European Region.

Social Security and Just and Favourable Conditions of Work

97) Refugees who are legally working in the formal sector enjoy the same protection as nationals. For the many who work in the informal sector, however, abuse in the form of lack of social security benefits, job security and minimum wages and discrimination are a concern.

Right to Own Property

98) Refugees have generally the right to own property on the same basis as nationals, or, as is the case of Armenia, Belarus, Republic of Moldova and Azerbaijan, under the same conditions as foreigners in the same circumstances, thereby meeting the standards set out by Art. 13 of the 1951 Convention.

Durable Solutions

Voluntary Repatriation

99) There are currently no major voluntary repatriation movements in the region. UNHCR is not promoting return to Afghanistan, Chechnya or Iraq, the countries of origin of most refugees. UNHCR does, however, coordinate some returns to Afghanistan from Azerbaijan, Belarus, the Russian Federation and Ukraine. Returns to Iraq, whenever possible and strictly on a voluntary basis, are also facilitated by UNHCR and IOM, however such efforts frequently encountered problems in obtaining documents and transit permissions for the persons concerned. Each year there are a few returns to Africa.

100) States are not involved in organizing or providing travel assistance for these voluntary return movements, which represents a major impediment for a more widespread use of the repatriation schemes.

Recommendations:

States to facilitate repatriation projects by providing refugees with the necessary documentation and consider the provision of financial support to return movements.

Countries of origin and asylum, working in cooperation with UNHCR, to promote voluntary repatriation, where appropriate, inter alia through the conclusion of tripartite agreements and confidence-building measures facilitating decisions on return, as well as, resources permitting, enhanced UNHCR field presence to allow continuous monitoring and to contribute to the creation of normal and peaceful conditions to facilitate repatriation.

Local Integration

101) Naturalization procedures for refugees vary widely. The Russian Federation allows naturalization after one year of legal residence, while other countries require between three to eight years of residence (Azerbaijan, Belarus⁶, Republic of Moldova, Ukraine). Georgia lacks any form of regularized naturalization procedures for refugees.

102) Ukraine is the only country in the region to have an integration strategy for refugees. Refugees of an ethnicity similar to that of the local population generally find it much easier to integrate and naturalize⁷. The region has not yet developed best practices in integrating refugees from different ethnic groups. Refugees of an ethnicity that has only a small presence in the host population are especially affected by the

⁶ In Belarus the authorities request, contrary to international standards, the explicit renunciation of the previous citizenship with the competent authorities of the country of origin.

⁷ Significant numbers of refugees from both Armenia and Azerbaijan have been naturalized in the past by the respective other country.

lack of integration strategies. They have less support from their compatriots and therefore are more dependent on the institutions set up in the host countries.

Recommendations:

States to examine, where appropriate, to grant recognized refugees the opportunity to become naturalized citizens of the country of asylum.

States, working in partnerships with international and regional development actors, to develop strategies for the integration of refugees and to contribute to the realization of local integration through burden-sharing, which ensures that the necessary resources are available to underpin self-reliance and local integration, in a manner that sustains the viability of local communities affected by their presence.

Resettlement

103) Resettlement as a durable solution and a tool of protection remains important in the region. Currently, UNHCR and resettlement countries focus on resettling especially vulnerable cases and others in need of special social and medical services. Special protection needs and the lack of local integration prospects for certain groups or ethnicities amongst the refugee population originate the by far highest number of potential resettlement cases, only a small part of which can effectively be addressed through the limited resettlement places available each year.

Recommendations:

UNHCR to work to enhance protection through an expansion of the number of countries engaged in resettlement, as well as through more strategic use of resettlement for the benefit of as many refugees as possible, taking, however, into account the resource implication thereof.