



Further Developing EU Asylum Quality



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# Building In Quality

A Manual on Building a High Quality Asylum System

Further Developing Asylum Quality  
in the European Union (FDQ)

September 2011





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This project is co-financed by the European Refugee Fund of the European Commission.





**United Nations High Commissioner for Refugees, Brussels, September 2011**

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# FOREWORD

As a Canadian-trained lawyer I have long been familiar with the use of checklists. When I became a refugee judge in Canada I noticed a number of colleagues struggling with making decisions. As Chair of the Professional Development Section of the Refugee Protection Division for Western Canada, I began to develop checklists to assist my colleagues in their analyses of difficult refugee concepts.

When I first arrived in Europe in 2008 and managed the Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) Project, I was struck by how little use was generally made of checklists. In the ASQAEM Project we introduced checklists as part of our training programme and as an aide to decision-makers. In the Further Developing Quality (FDQ) Project we have extended the range of checklists substantially along with updating and annotating them.

A checklist is a tool which aims to help ensure that a decision-maker has a clear grasp of the fundamentals of protection analysis and a logical manner in which to go about doing what is a very difficult job. The checklists here are generic in the sense that they cover essential issues but can be easily modified to add or subtract items that apply within any given country's particular legal system.

Throughout the FDQ Project participating Member States have shown both a willingness to use these checklists and considerable initiative in modifying them to suit their own specific needs.

This Manual also uses assessment forms as tools for Quality Audit Units to evaluate protection work in their country. I wish to acknowledge that our inspiration for these came from the UNHCR Quality Project operating in the UK. Our own assessment forms have been modified to reflect the differing conditions applying in the countries in which this Project operates. I would also like to acknowledge the contribution of Dr. Chrystalla Katsapaou, the FDQ National Project Officer in Cyprus for developing the Registration Assessment Form which appears in this Manual.

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Vancouver, British Columbia, Canada  
September 2011





# INTRODUCTION

The purpose of this Manual is to provide a short introduction to the various elements which are involved in establishing and maintaining a high quality asylum system in line with international and European Union (EU) law. Neither the 1951 Convention and 1967 Protocol Relating to the Status of Refugees (“Convention” and “Protocol”)<sup>1</sup> provide explicit directions on the kind of asylum system a State Party must set up.<sup>2</sup> Equally, the EU *acquis communautaire* on asylum – comprising the Directives and Regulations relating to asylum and international protection,<sup>3</sup> including notably the Qualification Directive (QD)<sup>4</sup> and the Asylum Procedures Directive (APD)<sup>5</sup> – do not provide specific direction on how asylum claim adjudication is to be carried out. This is left instead to the discretion of each sovereign country, within the terms of international and regional law – including, in the EU, the minimum standards set by the asylum Directives and Regulations. As a result, there are many different approaches adopted in the EU and throughout the world.

International and regional law seeks to provide a greater measure of consistency in the interpretation of the 93 words which define a “refugee”. The Convention as amended by the Protocol defines a “refugee” in the following way:

*For the purposes of the present Convention the term “refugee” shall apply to any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it.*<sup>6</sup>

The EU and its Member States have undertaken, and are bound under successive EU Treaties, to establish a Common European Asylum System (CEAS) in line with the 1951 Convention and other relevant treaties. Among other aims, the CEAS seeks to ensure that, irrespective of where an applicant for asylum makes his or her claim in the EU, he or she will have an equal chance of being granted protection in any of the Member States. It was with this aim that the EU Directives and Regulations were formulated, and seek to provide a common approach to interpreting protection criteria.

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1 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, at: <http://www.unhcr.org/refworld/docid/3be01b964.html>; UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

2 See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. The UNHCR Handbook on Procedures for Determining Refugee Status seeks to provide further guidance to States to assist them in implementing the 1951 Convention and 1967 Protocol, including in relation to fair and effective asylum procedures.

3 European Union, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, 30 March 2010, [OJ C 83, ], Article 78, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>.

4 Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 19 May 2004, 2004/83/EC, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>.

5 Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006, 2005/85/EC, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.

6 *Convention Relating to the Status of Refugees*, Article 1A.

Unfortunately the data available,<sup>7</sup> confirmed by the findings of the Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM)<sup>8</sup> and Further Developing Quality (FDQ) projects, indicate that the divergences amongst countries are very wide. As a result, it is not currently the case that an applicant will have the equivalent chance of being recognized as a refugee or subsidiary protection beneficiary in one EU Member State as in another.

Ensuring a high quality asylum system takes effort, commitment, and ongoing work. It requires at the outset the commitment of the national asylum authorities to attain the highest quality in adjudication that they can. If that is missing then the likelihood of success is seriously diminished.

This Manual has been prepared as a resource for EU Member States and other institutions and stakeholders with an interest in asylum quality in the EU, as well as those from other regions. It draws from the methods, processes and experience of the FDQ and other asylum quality initiatives and projects since 2004. It has been enriched by the perspectives, expertise and collaboration of the Member States that have worked with UNHCR in the course of the FDQ project.

The Manual is divided into six chapters. It begins with an overview of how to analyse the constituent parts of an asylum system. Before building a system, or in assessing how to strengthen it, it is critical to have a complete understanding of the role each part plays in the overall process. This is followed, in Chapter II, by a discussion of some basic elements required in building a high quality asylum system.

For the last four chapters, the Manual turns to the stages of asylum claim determination and the roles played by the various actors. Chapter III focusses on the initial contact an applicant has with the authorities of the country of asylum, and the significance this holds for the asylum interview and subsequent assessment of his or her claim. Chapter IV examines the role of the decision-maker at the first instance, starting from his or her role in preparing a claim file for an interview, until the production of the written decision. Considerable focus is put on a number of checklists, including several developed in the course of this project, to help guide a decision-maker in this regard. Chapter V examines the role of a Quality Audit Team (QAT) within a national asylum authority. Finally, in Chapter VI, the Manual provides guidance on the role played by the second instance judicial or administrative level in ensuring that decisions on protection claims are of a high and consistent quality.


While the first two chapters are more theoretical, and provide the basic elements for developing and strengthening a high quality asylum system, the latter four chapters are geared to the practical aspects of the asylum system. Tools are introduced in the form of checklists and assessment forms to help create and sustain a high quality asylum claim determination operation.

The special focus of this Manual is on decision-makers, as it is they who play the central role in deciding whether a person is entitled to protection in the Member States of the EU. Here, the Manual reviews not only the tasks of decision-makers, but introduces tailored checklists designed to assist them and facilitate the making of high quality decisions on international protection needs. In order to ensure that decision-makers understand and apply knowledge gained through training and guidance such as that

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<sup>7</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU*, 17 June 2008, COM(2008) 360, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF>; Council of the European Union, *The Stockholm Programme - An open and secure Europe serving and protecting citizens*; OJ C 115/1, 4.5.2010, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF>; UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, at: <http://www.unhcr.org/refworld/docid/4bab55752.html>; UNHCR, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, at: <http://www.unhcr.org/refworld/docid/473050632.html>.

<sup>8</sup> *Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern Europe Sub-Region (ASQAEM)*, a UNHCR project undertaken with European Refugee Fund (ERF) funding in cooperation with Austria, Bulgaria, Germany, Hungary, Poland, Romania, Slovakia and Slovenia, September 2008 - February 2010.



provided by the checklists, the project developed assessment forms. These could be used by a QAT to: (i) evaluate information provided by the applicant to the asylum authority prior to the formal interview; (ii) attend and evaluate interviews; and (iii) review decisions for quality. Finally, in Chapter VI, the Manual provides a Judge's Checklist, which provides a guide for a reviewing judge to ensure that a reviewed first instance decision is both correct and procedurally fair.

The FDQ Project was designed to be practical in nature. For this reason the tools described above were designed, drawing from the experience of and knowledge gained from working in collaboration with Member State authorities. These tools are *generic* and may serve as guides to how to analyse protection issues, notably legal concepts, as well as key procedural steps. The tools provided here are not intended to be complete and each country has the opportunity to make changes to reflect the situation and law in its own situation. Preceding each checklist, there is a discussion of some of the relevant theoretical issues which arise under that checklist.

The method by which these checklists are used is known as the “drill-down” approach. This approach is similar to the “T-funnel” approach used in questioning during a protection interview: starting generally and become increasingly specific as the case requires. The value of this approach is that checklists are available for any level of detail but accessed only as needed. Having these checklists available encourages a decision-maker to recognize the need for examining certain portions of an applicant's claim in more detail than others as well as the necessary questions to ask and issues to cover.





# CHAPTER I:

## HOW TO ANALYSE AN ASYLUM SYSTEM

### 1. Defining Quality

Quality encompasses all the stages of an asylum system from initial arrival in the State where protection is sought, until the completion of the asylum process in the courts, if relevant. It is not the same as simply executing the legal requirements of the job, and it is not simply being pleasant to the people who come before asylum officials in an official capacity. Perhaps a simple quote from Martin Luther King Jr. best explains it:

*If a man is called to be a street sweeper, he should sweep streets even as Michelangelo painted, or Beethoven composed music, or Shakespeare wrote poetry. He should sweep streets so well that all the hosts of heaven and earth will pause to say, here lived a great street sweeper who did his job well.<sup>9</sup>*

Participants in a high quality asylum system pride themselves on doing the best job they can.

### 2. Some Fundamental Principles

While there may be different methods of implementing the Convention and the EU Directives and Regulations, all asylum systems should be based on the following underlying principles of procedural fairness, which are:<sup>10</sup>

- The right to be informed about the procedure;<sup>11</sup>
- The right to a reasonable opportunity to prepare your case;
- The right to be heard;<sup>12</sup>
- The right to an unbiased decision-maker;<sup>13</sup>
- The right to know the case against you, answer it, and for your answer to be considered before a decision is made;<sup>14</sup>
- The right to have the decision made by the person who heard the evidence.

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<sup>9</sup> Six months before he was assassinated, Martin Luther King Jr. spoke to a group of students at Barratt Junior High School in Philadelphia on October 26, 1967.

<sup>10</sup> European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), Article 41 – Right to good administration, at: <http://www.unhcr.org/ref-world/docid/3ae6b3b70.html>. The right to be heard and to defence, have access to one's file, be given the reasons for a decision by the administration are part of the general principles of EU law.

<sup>11</sup> Article 10 (1) APD.

<sup>12</sup> EU Charter of Fundamental Rights, Article 41 (2).

<sup>13</sup> EU Charter of Fundamental Rights, Articles 21 and 47.

<sup>14</sup> EU Charter of Fundamental Rights, Article 41 (2).

### 3. Gathering the Data: The Five Stages

Both the ASQAEM and FDQ Projects applied consistent standards for gathering data about asylum systems in the EU. These recognized that before one can analyse a system for its effectiveness, it is important to gather extensive data about the operation of the whole system from beginning to end. This requires studying the asylum claim determination system from the moment an applicant enters the country until a review by a second instance decision-maker.

As all parts of the system interrelate it is critical to have a view of the whole. Only once this is accomplished can one be sure that suggestions for improvement would make sense. The FDQ Project analysed the work of refugee adjudication in five stages. These considered: (i) the situation before the interview; (ii) the interview itself; (iii) the written decision; (iv) the internal Quality Audit of the first instance process; and (v) the second instance appeal or review.

### 4. FDQ Flow Chart: An Example

The flow chart which follows provides an example of how the FDQ Project analysed several national EU asylum systems. The specifics referred to in this Chart are dealt with in the following chapters. Chapter III deals with the Registration stage; Chapter IV deals with the interview and the written reasons stage, Chapter V with the QAT and Chapter VI with the role of courts or administrative tribunals.

A

## FDQ ANALYTICAL FLOW CHART



ASYLUM-SEEKER



### THE REGISTRATION STAGE

- Initial Data Collected
- Medical Screening
- Vulnerable Group Screening
- Information on the Procedure
- Access to UNHCR
- Access to Legal Assistance
- Access to File
- Dublin Procedure



### THE INTERVIEW

- Adjudicator Preparation
- Explaining the Procedure
- Setting the Atmosphere
- Quality of Interpretation
- Gathering all the Facts
- Relevancy & Thoroughness of Questions
- Confronting Contradictions (Including COI)
- Role of Counsel
- Recording the Interview



### WRITTEN REASONS

- Lead In
- Summary of the applicant's Claim
- Identity
- Determination
- Analysis of Convention Refugee Status
- Analysis of Subsidiary Protection
- Analysis of any other Protection Needs
- Conclusion
- Remedies Available



QUALITY ASSURANCE  
UNIT (QAU)



REFERRAL TO COURT







## CHAPTER II:

# BASIC ELEMENTS OF A QUALITY ASYLUM CLAIM DETERMINATION SYSTEM

### 1. Introduction

The central elements of protection claim determination include the interview and the resulting decision. Other aspects serve to underpin these functions. In fulfilment of their commitment to high quality asylum determination, asylum authorities must ensure that at least four key components are in place. Firstly, it is important to recruit those persons most suitable for the difficult job of refugee adjudication. Secondly, the new employees will require appropriate training.<sup>15</sup> Thirdly, the training must be continuing and regularly updated in order to keep up with developments in national and European legislation, case law, developments in country of origin information and other information relevant to asylum claim adjudication (studies in memory, etc). Fourthly, and finally, in addition to defined standards and guidelines for adjudicators to follow, there must be reviews to ensure that these standards are being followed.

### 2. Building a High Quality Asylum Division Flow Chart

The following flow chart sets out the elements that comprise a high quality asylum system.

### 3. Recruitment

As noted in Flow Chart B, one needs to employ persons who are both personally suitable for the difficulties of adjudication and have relevant professional and educational qualifications in the field. These persons will need to be tested for these qualifications and then interviewed to determine their suitability. Failure to hire appropriately qualified personnel will, in the long run, cause many problems.

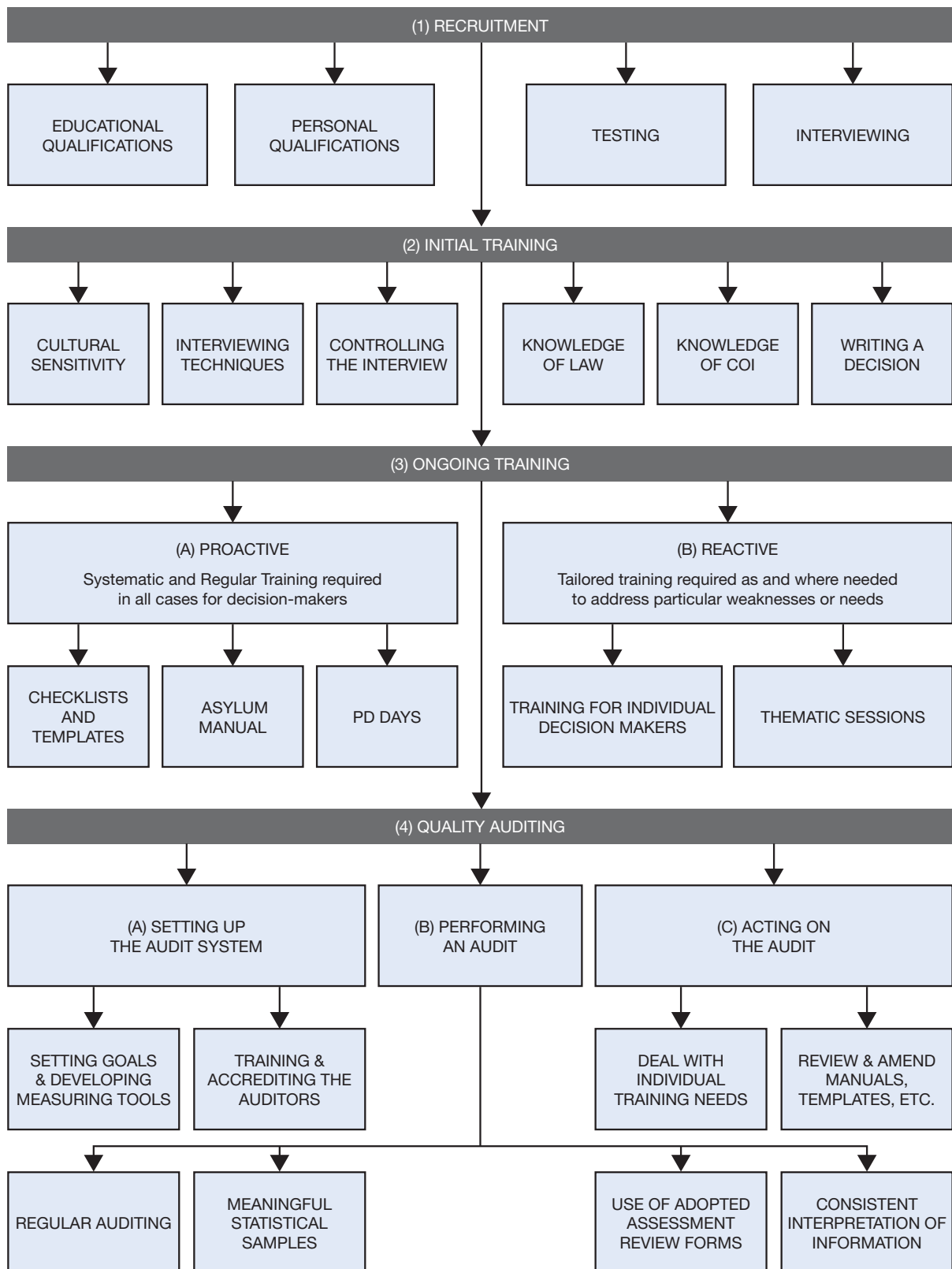
Different countries have approached this from different angles. Some have focussed on adjudicators who speak many of the languages spoken by applicants for protection, some have recruited former police officers who have experience in questioning, or lawyers who have knowledge of the law generally and specially refugee law. Others hire university graduates with limited or no work experience.

An important limitation in many countries is the budget. Frequently an asylum authority must operate with a very limited budget and this curtails its ability to hire the highest quality staff. In some countries, there may be a requirement that the asylum authority hire from within its civil service – even if the persons available are not appropriately qualified. Where a national asylum authority's hiring scope is thereby limited, it may have to devote even greater attention to the training it provides after a person is hired as an adjudicator.

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<sup>15</sup> APD, Article 8.

## B BUILDING A HIGH QUALITY ASYLUM DIVISION FLOW CHART



## 4. Initial Training

Initial training is pivotal. Because a decision-maker is frequently dealing with peoples of different cultures there is a great need for training in cultural sensitivity. How to conduct an appropriate and an effective interview is critical as that is at the very heart of asylum adjudication. But a knowledge of, and training in, legal concepts used within the framework of asylum adjudication is also key. A common problem with new decision-makers is an inability to control an interview. Yet this is necessary if the information needed for an informed decision is to be obtained. Decision writing and how to articulate facts, COI and law is another important component of the initial training.

Nevertheless, across countries taking part both in the ASQAEM and FDQ Projects, the amount of initial training which was observed ranged from a programme in excess of several weeks to absolutely nothing. Obviously, budget has a major impact on operating an effective system for training decision-makers. Some countries, including in some where there is no formal training programme, choose to designate a more experienced decision-maker to work closely in a pair with a new employee. Where the more experienced decision-maker is well qualified, this can be of help, but often these are not teachers or trainers and may themselves have difficulties. Without further, more structured training and organization, this kind of approach can lead to considerable internal inconsistency where the trainers have no common rules or approaches.

## 5. Ongoing Training

Setting up an ongoing training programme can be highly labor intensive and potentially expensive. Yet training should address both the specific needs of individuals, who require it due to shortcomings in a particular area or concerning a certain issue, and those of all staff, where particular themes (e.g. Membership of a Particular Social Group) seem to be causing difficulties in the decision-making process. These will be significant areas where such responsive or reactive asylum claim training may help.

Of note is the fact that the EASO Regulation foresees training needs *inter alia* in the following areas:<sup>16</sup>

- International human rights and the asylum acquis of the Union, including specific legal and case-law issues;
- Issues related to the handling of asylum applications from minors and vulnerable persons with specific needs;
- Interview techniques;
- The use of expert medical and legal reports in asylum procedures;
- Issues relating to the production and use of information on countries of origin;
- Reception conditions, including special attention given to vulnerable groups and victims of torture.

Training also needs to be proactive – in other words, set up to create a professionalized group of decision-makers. In this regard specific methods or approaches can be identified. The first is to provide guidance to decision-makers through practical means, such as templates for common decisions and checklists to help guide them in the day to day work. Secondly, guidance may also be provided through an asylum claim determination manual geared to the particularities of the given country. Finally, and of considerable importance, is to schedule regular (ideally monthly) Professional Development Days, where topics of current interest are addressed. By making these regular, there is less inclination to postpone or cancel them when competing schedules raise difficulties.

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<sup>16</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF>

Successful authorities recognize the importance of regular communication among staff and updating of issues and law. The experience of FDQ and other projects shows that often, at such meetings, it is helpful to create a mixed agenda – for example: (i) a session where a decision-maker discusses a difficult case; (ii) an outside speaker on a topic such as document verification; or the effects of Post-Traumatic Stress Disorder (PTSD) on the human memory; (iii) a review by the national legal department, potentially supplemented by UNHCR, of updates in national and EU jurisprudence; (iv) a special session on an area identified by decision-makers as difficult – for example, interviewing children.

The Professional Development Days have yielded some of the most significant and fruitful outcomes among many of the countries in the FDQ Project. They can serve to create a sense of professionalism; they allow an opportunity for direct dialogue between management, parts of civil society and decision-makers; and they afford to national authorities with significant workloads an opportunity to discuss their professional challenges, achievements and interpretations.

## 6. Auditing

A high quality asylum system needs continuous support to ensure that standards of quality, once put in place, will be maintained. Even systems which have elegant and thorough procedure manuals may experience difficulties with their observance in practice, which requires adequate regular monitoring of data on practice if there is not a regular review by the Quality Audit Team. These will rely on the QAT to ensure needs and available resources are identified and passed along to management and, where applicable, to a training unit.

A Quality Audit Team or mechanism empowers national asylum authorities to take forward useful tools, methods and principles identified or developed in the FDQ or other quality projects or related initiatives. UNHCR has done so, as part of the previous projects, with expert local lawyers who are fluent and/or educated in the language and law applying to their systems, working under UNHCR's supervision in close collaboration with national authorities. The aim of these projects has been to support Member States in building capacity, but also in demonstrating participating States' firm commitment to the quality goal, which the EU legislation enshrines as part of the CEAS.

The Building a High Quality Asylum Division Chart shows the various components of a Quality Audit Team and the various functions. Such a system must be set up by the national authorities, to ensure that audits are performed, measured and follow-up actions taken by a body with knowledge of the standards, methods and expectations that can be applied.



# CHAPTER III:

## INITIAL CONTACT WITH THE ASYLUM APPLICANT

### 1. Introduction

The phase before the interview can be critical. The purpose of a good interview is to provide an applicant with the opportunity to convey his or her whole story to the interviewer. Therefore, this phase should allow the applicant time to get information and prepare his or her case (with or without legal or other forms of assistance). But it is also a most important time for the interviewer to prepare for the interview.

### 2. The Registration Stage

Registration is the first step of the FDQ Analytical Flow Chart. At this stage, the decision-maker, or other parties involved in inspecting the process, may reasonably ask some of the following questions.

**Initial Data Taken:** What information on the applicant is collected by the asylum authority? Is the government representative trained in refugee and protection matters? How is the information gathered? Will the information collected be used in the interview for the assessment of the claim? If so, has the applicant had an opportunity to review it and to comment on it?

**Medical Screening:** Is the information put in the file for a decision-maker to see or kept in a separate medical file? What problems are caused by either of these methods? Are families' medical records put in separate files or all in one? How are confidentiality requirements managed in the case where they are all kept together?

**Vulnerable Group Screening:** Some persons who, for reasons of vulnerability – age, gender, post-traumatic stress disorder, and so on – may need to be examined for their capacity to take an effective part in their interview. A different kind of interview may also be needed, which takes into account the person's vulnerabilities. It is very important that at an early stage these vulnerabilities and/or needs are identified. Often these persons will need a special interview.

**Information on the Asylum Procedure:** Is information provided on the procedure? Is it provided in a language the applicant can understand? Is it provided in an age and gender sensitive manner?

**Access to UNHCR:** How do asylum-seekers learn of their right to seek the assistance of UNHCR? Is this effective in practice?

**Access to Legal Assistance:** Is there any legal assistance for the applicant? If so, at what stage of the proceedings? Equally important, is the applicant made aware of the assistance at the earliest opportunity and is the assistance of a sufficiently high standard?

**Access to File:** At what point can an asylum-seeker get access to the documents in his or her file so that he or she knows what documents will be used in deciding the initial claim to make preparations? Access to the file **before an interview** and **before a decision is made** is a fundamental procedural right – an applicant cannot speak up on his or her own behalf if he or she does not know what information is held and may be used against him or her. Providing access only **after** a decision is made is unproductive, as in many cases an applicant may be able to give a very reasonable explanation for what, to the decision-maker, may constitute a reason for rejecting a claim. By not giving an applicant the opportunity to clear something up, unnecessary appeals may be launched and the cost of these can be prohibitive.

**Adequate Time to Prepare:** Is there sufficient time to prepare between the applicant's registration and his or her interview? Frequently the charge against some asylum systems is that they take too long to hold an interview. Holding one too quickly can be just as unfair or even worse if the applicant has not adequate time to prepare him or herself.

**Dublin Procedure:** What information is collected in the procedure to establish the use of the Dublin Regulation procedure? How is the information collected? Is information provided on the Dublin procedure? Is the information provided in a language and in a manner the applicant can understand?

These are some of the issues, which arise at this stage of an asylum application. In Chapter V we introduce assessment forms, which can be used by the Quality Audit Team to assess these and other elements relevant to the effectiveness and fairness of the registration stage (See below in subsequent chapters).



# CHAPTER IV:

## THE ASYLUM CLAIM – THE ROLE OF THE DECISION-MAKER

### 1. Introduction

The first instance adjudicator, the decision-maker, is *the* critical person in the asylum procedure. In many cases, he or she will prepare the claim file for an interview and conduct an interview with the applicant. Under many national systems, he or she will then come to a decision on the claim and provide reasons for accepting or rejecting the claim. While EU law requires a second instance appeal, the powers of second instance courts or tribunals differ greatly. In some cases very sophisticated second instance tribunals or courts are in play, whereas in others the second instance may have no experience of refugee claims. It is therefore critical that the first instance decision-maker gets the analysis right – an error in the analysis might well send a refugee back to persecution or death.

Essentially the interviewer and/or decision-maker has responsibilities in four key areas: to prepare the file for the interview; conduct an effective interview; reach a correct assessment of protection needs; and write a set of written reasons that will clearly show a thorough analysis of the relevant facts, a proper consideration of COI and a correct application of legal principles.

It is important to note that the role of a decision-maker is a very difficult one. In order to produce the very best decision, a decision-maker shares with the applicant the burden of obtaining the applicant's account in full.<sup>17</sup> The hallmark of a good decision-maker is that he or she is well-prepared when entering the interview room, knows the facts of the case that have been disclosed, knows the country conditions where the person is from, and knows the legal principles that will come into play when deciding the case. A decision-maker must also be aware of the sensitivities of the applicant so that he or she can create a relaxing and safe environment to help ensure that all the relevant information necessary for a good decision is obtained. The decision-maker must also control the interpreter. In summary, a decision-maker must be well-prepared, an excellent interviewer, able to make an applicant feel at ease so that the full account can come out. He or she must also be a good researcher in order to gather information enabling him or her to be familiar with the conditions in the applicant's country of reference; a legal scholar able to analyse the facts of the claim within the context of the applicable statutory law and jurisprudence; and a good writer, capable of explaining clearly the reasons which led to the decision.

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<sup>17</sup> QD Article 4(1), second sentence.



## 2. Preparing for the Interview

In order to conduct a proper examination of a claim, a decision-maker must be *thoroughly* prepared. He or she must identify the important aspects of the claim, decide where further information will be needed during the interview, identify areas where questions need to be asked, and become familiar with the COI necessary to an understanding of the country issues. The better prepared the decision-maker is, the more efficient the interview will be, and the more relevant the questions asked. Failure to prepare wastes time in the interview, often results in irrelevant questions, and may require a second follow-up interview. By being well-prepared, the interviewer ensures the time slotted for the interview can be focussed upon the core of the claim and not upon tangential issues.

The following Protection File Preparation Checklist sets out the items with which any decision-maker must familiarize him or herself. The purpose of this checklist is to help the decision-maker canvas the general issues which arise in a protection claim, to see where more information may be needed either from the applicant or from a review of pertinent COI, or where possible contradictions need to be addressed.<sup>18</sup> At this stage the decision-maker will not have all the information and is not evaluating the claim, but only identifying areas for questioning and areas for research in order to get the complete account.

By way of explanation, this checklist sets out, in its first two columns, a set of “Issues” and “Issue Details” which can help decision-makers effectively to prepare for a thorough examination of the claim. By systematically going through the “Issues” and the “Issue Details” as listed, a decision-maker will be able to see the areas where more information is needed (for example, COI to support an applicant’s claim to the existence of a persecutory situation in his or her country), where the available information already satisfies an issue (for example, a valid passport will normally answer the issue of identity so that time in the interview need not be wasted on this subject). The “References” column provides the decision-maker with both the legal framework and useful explanatory discussions of the topics provided by UNHCR. The first gives the basic legal requirements, whereas the second elaborates with further background and material on the issues. A column is provided for the decision-maker to make notes, and a box to tick once the decision-maker is satisfied that he or she has addressed the issue. This checklist<sup>19</sup> may also be used by management when conducting reviews in order to see that the decision-maker has addressed the required elements.

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<sup>18</sup> National asylum authorities differ in their approaches to how much information is collected from an applicant upon arrival in the country and in registering a claim. Care should be taken by a decision-maker when reviewing such collected information with respect to grounds for a claim, as the person taking the information may not be trained in the area of refugee law and the interpretation may not be available or adequate. In other words, the safeguards present in a formal interview may not exist at the registration stage.



# PROTECTION FILE PREPARATION CHECKLIST

ISSUES	ISSUE DETAILS	REFERENCES	INTERVIEWER FILE NOTES/QUESTIONS	✓
Capacity	Mental Competency, Under-aged Minor, victim of PTSD, etc.	APD: Articles 6, 12, 17 UNHCR Handbook: Paragraphs 206 – 219 UNHCR Guidelines: Best Interests of the Child [2008], Unaccompanied Minors [1997]		
Identity	Name and Country of nationality or former habitual residence	APD: Articles 11, 23 QD: Article 4 UNHCR Handbook: Paragraph 197 UNHCR Note: Paragraph 10		
Applicant's Claim	<p><b>Identify</b></p> <ul style="list-style-type: none"> <li>The material facts and any special factors about the applicant or his/her family background.</li> <li>What and who the applicant fears.</li> <li>Whether the COI discloses other potential risks to the applicant or to similarly situated persons.</li> </ul>	QD: Article 4 UNHCR Handbook: Paragraphs 66, 67, 196 UNHCR Note: Paragraph 6		
Credibility Issues	Is there <i>internal</i> consistency in the Applicant's oral, written & documentary evidence?	QD: Article 4 UNHCR Handbook: Paragraph 199 UNHCR Note		
	Is the applicant's evidence externally consistent with statements of witnesses or family members and with COI?			
	If there is delay, what reasons are given for: (i) delay in departure; (ii) not claiming elsewhere; (iii) not claiming earlier?			
Persecution	Who is the agent of persecution?	QD: Articles 4, 6, 9 UNHCR Handbook: Paragraphs 45, 51 – 60 UNHCR Note: Paragraph 19		
	What is the nature of the feared persecution?			
State Protection	If the applicant claims past persecution has he or she sought state protection? If not, what are the reasons for not doing so?	QD: Article 4, 7 UNHCR Handbook: Paragraphs 97 – 100 UNHCR Note on International Protection [1999]		
	Does the COI indicate that the State might be unwilling or unable to protect this applicant or similarly situated individuals?			
Reasons for Persecution [Nexus]	Race	QD: Articles 9, 10 UNHCR Handbook: Paragraphs 66 – 86 UNHCR Guidelines on Membership of a Particular Social Group UNHCR Guidelines on Religion based Persecution UNHCR Gender Guidelines		
	Nationality			
	Religion			
	Membership of a Particular Social Group			
Internal Protection [Internal Flight Alternative]	Relevant	QD: Article 8 UNHCR Handbook: Paragraph 91 UNHCR Guidelines on IFA		
	Identify a proposed relocation area			
	Legally and safely accessible			
[Re-location Alternative]	Reasonable to settle and remain			
Subsidiary Protection	Article 15 (a)	QD: Articles 2, 15 UNHCR Statement on Article 15 (c) of the QD		
	Article 15 (b)			
	Article 15 (c)			
Exclusion	Exclusion: Article 1E	QD: Article 12 UNHCR Handbook: 140 – 163 UNHCR Guidelines on Exclusion		
	Exclusion: Article 1F			

## 3. The Interview

### Adjudicator Preparation

As noted above, the better the preparation, the better the decision. It is costly and very time consuming to hold second interviews, or to correct errors on appeal, and so it makes sense to give the initial decision-maker the best evidence, so he or she can make the best decision.

### Explaining the Procedure

It must be remembered that applicants in the asylum procedure will be in different situations. Some will be well-educated, some not, some fear authority figures, some are nervous, afraid to tell some of their deepest concerns and so on. Many applicants are not sure where they are when they enter an interview room, who the person conducting the interview is, nor often even the purpose of an interview. It is important that the decision-maker take the time at the outset to introduce the persons in the room, explain the purpose of the interview and what may follow from it (when a decision may be expected, possible appeals and so on). He or she should also ask the applicant if he or she is ready to proceed and whether he or she has any questions.

### Setting the Atmosphere

Many asylum applicants are frightened by authority figures, often because of the experiences they had in their own countries. Apart from that they know that their future, and perhaps their or their family's safety, depends upon their interview. It is important for the decision-maker to create a positive and safe environment. Many people who are afraid will not open up and tell their stories. There are many cultural factors of which the interviewer must be aware. Ways in which an interviewer can put an applicant at ease include offering him or her water, reminding him or her that he or she can ask a break if needed, and starting the interview with a few introductory questions. Decision-makers should also be conscious that they represent their country and act appropriately.

### Quality of Interpretation

It is of critical importance to determine that the applicant and the interpreter understand each other; after all, most claims are conducted through the filter of an interpreter. Given so much effort is expended throughout the protection process to ensure that the applicant is able to give his or her account fully, none of this would be of any use if the interpretation itself were poor. While the interpretation need not be perfect it must be such that the applicant can effectively communicate the facts of his or her case. It is not acceptable for the interviewer to do **anything** other than interpret the exact words of the applicant. In other words, the interpreter uses the 1<sup>st</sup> person singular ('I') and not indirect speech, such as: *"The applicant says he went to the government office to...."*. Nor may the interpreter ask his or her own questions, speak by telephone during an interview, comment to the decision-maker on the credibility of the applicant or give evidence.<sup>20</sup>

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<sup>19</sup> Full size versions of the checklists which appear in this Chapter may be found in the Appendix.

<sup>20</sup> By way of exception, circumstances sometimes arise when it may be necessary for an interpreter to comment on linguistic issues, which are within his or her expert knowledge, and which is directly relevant to the understanding of the applicant's account. For example, if the interpreter knows that there is not an equivalent word in the asylum country's language or that the applicant's answer is based upon a misunderstanding of the interviewer's/interpreter's words.

## Gathering all the Facts

The purpose of the interview is to gather the facts of the claim, which will provide the basis for the decision. This is a shared burden between the applicant and the decision-maker. A well-prepared decision-maker will know the details of the account, be aware of relevant country conditions and follow a checklist to ensure that he or she has not missed critical areas of examination. The questions asked should be relevant and thorough, beginning with broad questions and moving to more specific ones, where required.

## Confronting Contradictions (including COI)

It has been estimated that between 48 and 90% of refugee claims worldwide are decided based on credibility assessments;<sup>21</sup> and yet no subject is more difficult to address. However, it is a fundamental principle of law that a person must know the case against him or her and have the opportunity to respond to it. All contradictions, inconsistencies, omissions and other uncertainties or doubts – basically anything that a decision-maker might use to reject a claim – should be put to the applicant for his or her comment or explanation. This includes COI. An applicant should have access to the same information that the decision-maker has. Among the key reasons for this is so that he or she can challenge the accuracy or relevance of that information, where it might lead to a negative credibility finding.

## Role of Legal Adviser or Counsellor

Under the Asylum Procedures Directive, applicants are entitled to the opportunity to consult in an effective manner a legal adviser or other counsellor in relation to their asylum applications.<sup>22</sup> The adviser should assist the applicant in preparation of the claim, including for the interview; during questioning at interview, to the extent possible; and in the making of any other relevant submissions. However, the role of an effective adviser or counsellor does not stop there. The adviser should be well-prepared. Where national law permits, he or she should participate in the interview, including potentially asking questions important to the applicant's claim which have been missed, or objecting where there is a good reason to object. Finally, in submissions, an effective legal adviser or counsellor should have the opportunity to present his or her analysis of the claim for the decision-maker's consideration. Decision-makers rely upon excellent legal representation to make the best decisions.

## Recording the Interview

How an interview is recorded varies from place to place. In UNHCR's view, the most effective manner of making an accurate record is to audio or video record the interview. Although an interviewer will always need to take notes during an interview, he or she will have more opportunity to observe the applicant as he or she tells the account, rather than focussing on typing or handwriting a verbatim record of the interview. If there is a dispute over the content, the recording can resolve it.

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<sup>21</sup> Rosemary Byrne, *Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals*, *International Journal of Refugee Law*, November 7, 2007, at: <http://ijrl.oxfordjournals.org/content/19/4/609.abstract>.

<sup>22</sup> APD, Article 15.

In jurisdictions where a written summary record of the interview is made, a decision-maker may read the record back to the applicant at or after the conclusion of the interview, noting any comments or objections made by the applicant, in order to ensure the accuracy of the record. While this method can, where thoroughly and rigorously done, ensure an accurate account, there are some drawbacks with this approach. Firstly, it requires of the applicant or counsel great concentration, after what can be a long interview, in order to correct anything in the record with which there is disagreement. Secondly, an applicant may look for what is recorded incorrectly, and miss other aspects that were never recorded by the decision-maker in the first place, which should have been. And, of course, a claimant may not want to antagonize the adjudicator by objecting too often. This means that a full audio or video recording, either in addition to or in place of a summary written report, is more effective as a record of the evidence given.<sup>23</sup>

Some of the challenges discussed above concerning the preparation, conduct and other aspects of the interview can be addressed through the systematic steps proposed in the Protection Claim Interview Checklist (see below) developed in the context of the FDQ project. The purpose of this Protection Claim Interview Checklist is to enable the interviewer logically to gather all the facts, in order to have a complete understanding of the claim. Questions are suggested which can help focus the interview and ensure that, upon completion, the interviewer will have all the necessary information to reach and write a well-reasoned decision. As noted earlier, a decision-maker may already have obtained answers to some of the questions during the file preparation phase. The checklist below is suggested in preference to a pre-determined set of questions. Such questions might narrow the scope of enquiry. The checklist, by contrast, proposes open questions which allow for a full examination of all the issues. This, of course, does not mean that a decision-maker will not, on the basis of his or her review of the file, have come up with some specific questions.

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<sup>23</sup> UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Key Findings and Recommendations*, March 2010, Chapter 6, at: <http://www.unhcr.org/4ba9d99d9.html>.



# PROTECTION CLAIM INTERVIEW CHECKLIST

ISSUES	SPECIFIC QUESTIONS	INTERVIEWER NOTES	✓
<b>GATHER THE FACTS</b> <i>Gather all the relevant evidence before proceeding to an analysis of potential status</i>	Has there been past persecution or serious harm?		
	Are there any personal characteristics of the applicant that might affect his or her susceptibility to persecution or serious harm or ability to seek state protection or relocate to an IFA?		
	What is the situation for similarly situated persons?		
	Is there any basis for Exclusion?		
<b>CHECK THE CREDIBILITY</b> <i>Are there any issues which cast doubt on the credibility of the applicant's claim? If so, has he or she been given the opportunity to explain them?</i>	Are there any contradictions, inconsistencies or omissions in the applicant's oral evidence which are central to the claim?		
	Are the applicant's documents consistent with his or her claim?		
	If there is any evidence from family members or witnesses is it consistent with the applicant's claim?		
	Is the COI consistent with the applicant's claim?		
	Has the applicant given reasonable explanations for any apparent contradictions, inconsistencies or omissions?		
<b>PERSECUTION</b> <i>What problems has the applicant faced or fears facing if he or she returns to his or her country?</i>	What is the nature of the feared persecution?		
	From whom does the applicant fear persecution?		
	Is the persecution feared cumulative?		
<b>STATE PROTECTION</b> <i>Can the applicant get state Protection?</i>	If the applicant was persecuted in the past did he or she go to his or her state for help?		
	If the applicant was persecuted in the past and did not seek state protection why not?		
	If the applicant were to go to his or her state for protection does he or she think the state could provide protection?		
<b>CONVENTION REASONS [NEXUS]</b> <i>For what reason does the applicant fear he or she will be persecuted?</i>	Race		
	Religion		
	Nationality		
	Member of a Particular Social Group		
	Political Opinion		
<b>IFA</b> <i>Can the applicant safely relocate somewhere in his or her country?</i>	Where a DM has identified a specific IFA as relevant can the applicant get to it safely and legally?		
	If an IFA is relevant can the applicant live there safely?		
	If an IFA is relevant can the applicant live there reasonably?		
<b>SUBSIDIARY PROTECTION</b> <i>QD; Article 15</i>	Does the applicant face a "real risk" of "serious harm" due to the death penalty or execution?		
	Does the applicant face a "real risk" of "serious harm" due to torture or inhuman or degrading treatment or punishment?		
	Does the applicant face a "real risk" of "serious harm" due to serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict?		

## 4. The Written Decision

### The “Drill-Down” Approach to Writing Protection Decisions

A properly written protection decision should be structured logically so that the basis of the decision is transparent to a reader. The decision should contain the relevant facts upon which the claim is based, reference any COI used to evaluate these facts, and set out the legal principles used to arrive at the conclusion.

The most effective approach to protection analysis, which also reflects States’ international refugee law obligations under the 1951 Convention, EU Directives and Regulations, is first to analyse whether an applicant is entitled to Convention refugee (CR) status. Only if he or she does not, then the analysis moves on to whether the applicant qualifies for subsidiary protection (SP). In some countries, where there is another form of protection offered by the State, the decision-maker (referred to in some checklists as “DM”) may be required to analyse that in addition, if no entitlement to Convention refugee or subsidiary protection status is established.

Decision-makers can use increasingly detailed checklists to structure written protection decisions in an orderly and principled way. The method by which these checklists are used is known as the “drill-down” approach. A decision-maker can, depending upon his or her knowledge, choose to consult or use the drill-down checklists at whatever level of detail is needed. This form of analysis – going from the general to the specific – is similar to the approach used in the European Asylum Curriculum (EAC) Modules. It is also similar to the approach taken when questioning applicants in an interview regarding protection claims: namely, starting generally and then narrowing down, the “T-funnel” approach.

The Written Protection Decision Checklists work in the following manner. Firstly, there is a general **Protection Claim Analysis** Checklist. Because this is the broadest checklist, outlining a complete protection analysis from Convention refugee to subsidiary protection status, it is termed as a “Level I” checklist. It sets out a model order or sequence for writing a protection decision. It looks like this:



Focussing the analysis on the **Convention refugee protection** aspect, we come to the Convention Refugee Analysis Checklist. This is described as a Level II checklist because it is more specific and stems from the **Protection Claim Analysis** Checklist (a Level I checklist). It looks like this:



Similarly, the **Subsidiary Protection Analysis** Checklist is also a Level II Checklist for the same reason (See Chapter IV, part 4, section D (below)).

However, within the analysis of Convention refugee status, a decision-maker might wish to focus yet more narrowly on, for example, the question of the nexus, meaning the possible connection between persecution and a Convention refugee ground/reason. Consequently, the **Convention Refugee Analysis – Nexus** Checklist becomes a Level III checklist (below):



Further narrowing the scope of the nexus issue to one of its constituents – for instance, Membership of a Particular Social Group (MPSG) – brings us to a Level IV checklist, entitled **Convention Refugee Analysis – Nexus: MPSG**. It looks like this:



In a similar vein, when analysing subsidiary protection, decision-makers might wish to focus on a particular part of the different criteria for subsidiary protection, such as that relating to people facing an individual threat of serious harm from indiscriminate violence in situations of armed conflict under the EU Qualification Directive Article 15 (c). The analysis would then require a Level III checklist, following the Level II Subsidiary Protection Checklist.

This drill-down approach can be carried out to any number of levels to increase the degree of detail regarding the criteria for protection, as the scope of the analysis becomes more focussed. The value of this approach is that checklists are available for any level of detail - but can be consulted and used only as needed. Making these checklists available encourages a decision-maker to recognize the need to examine systematically certain portions of an applicant’s claim in more detail than others. It also serves to highlight the necessary questions to ask and issues to cover.

The checklists which follow (Level I: General Protection Analysis, Level I: Convention Refugee Analysis, Level II: Subsidiary Protection Analysis, Level III: Nexus Analysis, Level III: Internal Flight Alternative Analysis and Level III: Exclusion Analysis) lay out a systematic approach to analyzing and writing a protection decision. There is no single, correct way to write a protection decision. There are many templates in use in many countries, which approach the issue in different ways. That which follows is an approach favoured by UNHCR.

## A. General Protection Analysis Checklist

This checklist, with an introduction for the easy reference of decision-makers, sets out a suggested format to follow when writing a complete protection decision. For a detailed analysis of Convention refugee protection needs, refer as indicated to the **Written Protection Decision Checklist: Convention Refugee Analysis**. For a detailed analysis of subsidiary protection needs, refer to the **Written Protection Decision Checklist: Subsidiary Protection**.





# WRITTEN PROTECTION DECISION CHECKLIST

Level I

## GENERAL INSTRUCTIONS

The basic rule in protection analysis is that the Decision-Maker (DM) first analyses whether an applicant is entitled to Convention Refugee [CR] status and if he or she is not so entitled, then the analysis moves on to whether the applicant qualifies for Subsidiary Protection [SP]. [Note Article 2 (e) of the EU Qualification Directive requires that an assessment of Subsidiary Protection not be made until after the evaluation of CR status.] In some countries, where there is a further discretionary protection offered by the state, the DM may be required to analyse that as well if no CR or SP status is established.

This **checklist** sets out a suggested format to follow when writing a Protection Decision. For a detailed analysis of CR status please use **Written Protection Decision Checklist: Convention Refugee Analysis**; for a detailed analysis of SP status please use **Written Protection Decision Checklist: Subsidiary Protection**.

In some countries it may not be possible to follow the outline provided below for various reasons. This is a “generic” checklist aimed at providing a suggested approach. Countries may wish to adapt it to their particular circumstances.

ISSUES	SPECIFIC QUESTIONS	✓
Required Preliminary Information	Different states have different requirements as to what <b>must</b> be put in a Protection Decision. Where that is the case, and where appropriate, the best place to put this is at the outset.	
Lead In	The ‘Lead In’ is a short statement which identifies the applicant and the basis of the claim – such as: <i>“The applicant states that he is a 35 year old national of xxxxx who claims protection on the basis of his political opinion.”</i> The purpose is to state the basis of the claim and to allow the reader to know at the outset the general nature of the claim.	
Summary of the Claim	<b>The examination of the particular aspects of each claim must be thorough.</b> This section contains the applicant’s account of why he or she is seeking protection. It should contain any relevant written information provided prior to the interview as well as his or her testimony or that of other family members or witnesses. Supporting documents provided by the applicant may also be listed. Enough information should be provided so that a reader unfamiliar with the claim would be able to understand why Protection is being sought. Only facts which are central to the basis of the claim should be included. <b>This is not the section where an evaluation of the claim will be made.</b>	
Identity	A short statement of whether the applicant’s identity (name and country of origin) is accepted and why or why not.	
Determination	A short statement of the decision which should address the possible protection grounds (Convention status, Subsidiary Protection status and any Temporary Protection status). For example: <i>“The Refugee Authority has concluded that the applicant is (or is not) eligible for Convention Refugee Protection or Subsidiary Protection for the reasons which follow.”</i>	
Analysis of CR Status <i>[For a detailed CR analysis see: Written Protection Decision Checklist: Convention Refugee Analysis]</i>	In this section a DM will analyse the material facts of this claim, the relevant Country of Origin Information [COI], the applicable law and then draw a conclusion as to whether the applicant qualifies for CR Protection. In order to qualify for CR status an applicant must establish that he or she has a well-founded fear of persecution. This involves establishing the various elements of the refugee definition. (i) The material facts of the applicant’s claim must be credible [ <b>Credibility</b> ]; (ii) there must be a “reasonable possibility” that should the applicant be returned to the country of nationality or former habitual residence he or she would suffer harm [ <b>Objective Basis</b> ]; (iii) the authorities in the applicant’s country must be either “unable” or “unwilling” to protect him or her [ <b>Protection</b> ]; (iv) the harm must constitute “persecution” [ <b>Persecution</b> ]; (v) the “persecution” feared must be “for reason of” one of the five grounds listed in the Refugee definition [ <b>Nexus or Convention Ground</b> ]; and (vi), in countries which apply the Internal Flight Alternative [IFA], it must not be possible for the applicant to live “safely” and “reasonably” in any part of the country [IFA]. If any of these elements is missing then the definition of a Convention Refugee has not been met and the DM must move on to a consideration of whether SP applies.	
Analysis of SP Status. <i>[For detailed analysis of SP see: Written Protection Decision Checklist: Subsidiary Protection.]</i>	If the applicant is not eligible for Convention Refugee status he or she may still be eligible for Subsidiary Protection. The DM will need to analyse three issues in this section. Does the applicant face <i>“a real risk of suffering serious harm” upon return to his or her country of origin for reasons relating to the (i) “death penalty or execution”; (ii) “torture or inhuman or degrading treatment or punishment... in the country of origin”; (iii) “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”.</i> In this section the DM may find conclusions reached under the CR analysis with respect to credibility, protection, or IFA relevant here as well. [The quotes are from the EU Qualification Directive, Articles 2 and 15.]	
Exclusion	Where the facts warrant it, the DM must analyse whether the applicant is excluded from CR or SP protection.	
Legal Remedies	Where a protection status is denied, specify available legal remedies. This is a requirement of Article 9 (2) of the EU Asylum Procedures Directive.	

In some countries, it may not be possible to follow the outline provided below for various reasons. Given that this tool is a generic checklist aimed at providing a suggested approach, countries may wish to adapt it to their particular circumstances.

## B. Convention Refugee Analysis Checklist

There are many possible ways to analyse a protection claim; no single way is correct. The Convention definition of a refugee requires that certain elements be present as listed below. As noted, where one of the elements is not present, then the applicant will not be entitled to Convention refugee status. Only after a full consideration of all the facts of the claim has been undertaken, as indicated in Step 1, is it possible to begin the analysis in theory at any of Steps 2, 3, or 4. The decision-maker always needs to first have gathered and examined all the relevant facts of the case, even where the decision will ultimately be based on the existence of an IFA or State protection for instance. Step 1 cannot be omitted. In some cases, it may be sufficient simply to accept all the claimed facts without pursuing a detailed credibility analysis, and proceed to other key issues.

In the Convention refugee analysis which follows, however, the sequence or order of analysis follows quite closely that utilized by UNHCR. It requires a step by step consideration of all the elements of a claim for protection that may qualify the applicant for refugee status. There are a number of reasons for this. Most importantly, one of the most important requirements in an asylum procedure is the need to gather all the relevant facts. Without doing so, it becomes impossible to properly analyse a claim. A decision-maker simply needs all the information, even where he or she intends to base a decision on the analysis and conclusion relating to a particular issue, such as the possible existence of an internal flight or protection alternative. Another reason for proceeding through the step by step analysis is that, while the accepted and available COI (Step 2) may not lead to the grant of Convention refugee status, it may confirm the applicant's need for subsidiary protection. Going through the steps is also a very important way to assist decision-makers to keep abreast of changing laws and interpretations of key refugee concepts.

In analysing a protection claim, a decision-maker will gather, and then analyse, the material facts of this claim, the relevant Country of Origin Information (COI) and the applicable law. He or she will then draw a conclusion as to whether the applicant qualifies for Convention refugee protection. In order to qualify for Convention refugee status, an applicant must establish, in cooperation with the authorities,<sup>24</sup> that he or she has a well-founded fear of persecution if he or she returns to his or her country. This involves establishing the various elements of the refugee definition. For this purpose, (i) the material facts of the applicant's claim must be credible (**Step 2: Credibility**); (ii) there must be a reasonable possibility that, should the applicant be returned to the country of nationality or former habitual residence, he or she would suffer harm (**Step 3 (a): Objective Basis**); (iii) the authorities in the applicant's country of origin or former habitual residence must be either unable or unwilling to protect him or her (**Step 3 (b): Protection**); (iv) the harm must constitute persecution (**Step 3 (c): Persecution**); (v) the persecution feared must be for reason of one of the five grounds listed in the Convention refugee definition (**Step 3 (d): Nexus or Convention Ground**). (vi) In countries which apply the internal flight or protection alternative (IFA), protection may not be available if it is possible for the applicant to live safely, legally and practically and reasonably in any part of the country (**Step 4: IFA**). Where the facts warrant it, the decision-maker must analyse whether the applicant is excluded from protection (**Step 5: Exclusion**).

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<sup>24</sup> QD, Article 4.



### GENERAL INSTRUCTIONS

In this section a DM will analyse the material facts of this claim, the relevant Country of Origin Information [COI], the applicable law and then draw a conclusion as to whether the applicant qualifies for CR Protection. In order to qualify for CR status an applicant “must establish, in cooperation with the authorities” that he or she has a well-founded fear of persecution. This involves establishing the various elements of the refugee definition. (i) The material facts of the Applicant’s claim must be credible [**Credibility**]; (ii) there must be a “reasonable possibility” that should the Applicant be returned to the country of nationality or former habitual residence he or she would suffer harm [**Objective Basis**]; (iii) the authorities in the Applicant’s country must be either “unable” or “unwilling” to protect him or her [**Protection**]; (iv) the harm must constitute ‘persecution’ [**Persecution**]; (v) the ‘persecution’ feared must be “for reason of” one of the five grounds listed in the Refugee definition [**Nexus or Convention Ground**]; and (vi), in countries which apply the Internal Flight Alternative [IFA], it must not be possible for the Applicant to live “safely” and “reasonably” in any part of the country [**IFA**]. If any of these elements is missing then the definition of a Convention Refugee has not been met and the DM must move on to a consideration of whether SP applies. [Where the facts warrant it, the DM must analyse whether the Applicant is excluded from protection.]

The suggested analysis below leads the DM through the elements of the Refugee definition in a principled and logical way. The references in the boxes to the left are to the governing European law [The EU Qualification Directive (QD) or the EU Asylum Procedures Directive (APD)] in all countries of the EU irrespective of whether these provisions have been incorporated into national law. However, the EU Directives set out minimum standards for the protection of Applicants for international protection pursuant to the Refugee Convention or Subsidiary Protection. Article 5 of the EU Asylum Procedures Directive provides that “Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.” Note as well that the UNHCR has published interpretative Guidelines on both Membership of a Particular Social Group and Religion-based Persecution. The UNHCR has also provided observations through its Excom publication: Thematic Compilation of Excom Conclusions. For information on international case law relevant to the Refugee Convention the UNHCR has published: Compilation of Case Law on the Refugee Convention. All of these are available on its website.

ISSUES	SPECIFIC QUESTIONS	✓
<b>STEP 1</b> <b>Summary of the Claim</b> QD: Article 4	<b>SUMMARY OF THE CLAIM:</b> is the responsibility of the DM to determine if, on the basis of the facts in the asylum claim, the applicant is entitled to Convention Refugee protection. The DM must work jointly with the applicant to establish the facts of the claim and analyse each case on the basis of those individual facts. If the applicant has been subject to persecution in the past that “...is a serious indication of the applicant’s well founded fear of persecution” for the future “...unless there are good reasons to consider that such persecution or harm will not be repeated.” The clearest way to obtain the necessary facts is to ask the applicant what has happened to him or her in his or her country and what does he or she fear if returned to his or her country. Do not ask whether he or she has been persecuted, or fears being persecuted, for one of the five CR grounds as he or she might not know what these grounds mean in law, nor the legal meaning of “persecution”. It is better to simply ask: “What problems have you faced or do you fear facing if you return to your country?”	
<b>STEP 2</b> <b>Credibility</b> QD: Article 4	<b>CREDIBILITY:</b> Evaluate the credibility of the information provided by the applicant regarding the <b>material elements</b> of the claim with reference to the relevant credibility indicators and taking into account the <b>reasonableness of any explanations</b> provided by the applicant for apparent credibility problems [Emphasis added]. When evaluating the credibility keep in mind the following five credibility indicators: (i) Sufficiency of detail and specificity; (ii) Internal consistency of oral and written information provided by the applicant including documents; (iii) Consistency of applicant’s statements with information provided by family members/witnesses; (iv) Consistency with COI; (v) Plausibility. Assessing credibility is one of the most difficult aspects of decision making. It involves both the Burden and the Standard of Proof. A “Burden” of proof refers to <b>who</b> must prove something whereas a “Standard” of proof refers to the extent to which something must be proved. While Article 4 of the QD notes that the “Burden” of substantiating a claim is a shared one between the applicant and the DM, it does not articulate a “Standard” of proof beyond “substantiating”. In paragraph 11 of its <b>Note on the Burden and Standard of Proof in Refugee Claims</b> issued December 16, 1998 the UNHCR states that... “Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.” [Emphasis added]	
<b>STEP 3</b> <b>Well-Founded Fear Assessment</b>	<b>WELL-FOUNDED FEAR ASSESSMENT:</b> In this step the DM will analyse whether the claim of the applicant meets the requirements of the refugee definition. This involves determining whether the fears expressed are objectively grounded, whether the state is able and willing to offer effective protection, whether the feared harm would constitute persecution, whether that persecution is for reasons of one or more of the five Convention grounds.	
<b>STEP 3a</b> <b>Objective BASIS</b>	<b>OBJECTIVE BASIS:</b> Considering the relevant COI, the individual profile and experiences of the Applicant, and the experience of similarly situated individuals in the country of origin, is there a reasonable possibility that the Applicant would experience harm if returned to the country of nationality or habitual residence? The DM should base his/her assessment on the facts he/she has accepted relating to the applicant’s profile and experiences and with reference to the relevant COI.	

<p>STEP 3b State Protection QD: Article 7</p>	<p><b>PROTECTION:</b> can be provided by (i) the state; or (ii) parties or organisations controlling either the state or a substantial portion of it. Some countries require only that the state provide protection.</p> <p>Protection is <b>generally</b> provided where the parties in (i) and (ii) above take “reasonable steps” to prevent the persecution by, <b>among other things</b>, operating an “effective” legal system for (i) the “detection”, (ii) “prosecution”; and “punishment” of crimes and the applicant has “access” to that protection system.</p>	
<p>STEP 3c Persecution QD: Articles 6, 9</p>	<p><b>ACTS OF PERSECUTION:</b> must be “...sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights”. They can involve acts of physical, mental or sexual violence; involve legal, administrative, police or judicial measures; prosecution or punishment; denial of judicial redress; military service; or acts of a gender-specific or child-specific nature.</p> <p><b>AGENTS OF PERSECUTION:</b> can be carried out by (i) the state; (ii) parties or organisations controlling either the state or a substantial portion of it; or (iii) by non-state actors where the parties mentioned in (i) and (ii) are either unwilling or unable to provide protection.</p>	
<p>STEP 3d Nexus / Causal Link QD: Article 10</p>	<p><b>GROUND OF PERSECUTION:</b> There are five grounds upon which a CR claim may be grounded. (i) race; (ii) religion; (iii) nationality; (iv) membership of a particular social group; and (v) political opinion. Remember that the definition states that persecution may “...be for reasons of...” In other words, what matters is what is in the eye of the persecutor. Even if an Applicant is being persecuted for a political opinion he or she does not have, he or she is still being persecuted “for reasons of... political opinion”.</p>	
<p>STEP 4 Internal Flight Alternative QD: Article 8</p>	<p><b>INTERNAL FLIGHT ALTERNATIVE:</b> Not all countries apply the concept of an IFA. In those that do and in order that a finding be made that the applicant has an IFA the DM must raise the issue at the interview and clearly state where in the applicant’s country the suggested IFA is located. In order to qualify as an IFA the specified location must be (i) safe for the applicant and (ii) reasonable for the applicant to remain in. The particular circumstances of the applicant must be taken in to account in this analysis.</p>	
<p>STEP 5 Exclusion QD: Article 12</p>	<p><b>EXCLUSION:</b> Is there any indication that the applicant may have been associated with events that could bring him/her within the application of the exclusion clauses in Article 1F (a), (b) or (c) of the Convention?</p>	
<p>STEP 6 Conclusion APD: Articles 9 (2), 34 (3)</p>	<p><b>CONCLUSION:</b> The DM should state his/her conclusions with supporting reasons in fact and in law and, if the conclusion is negative, refer to any available remedies.</p>	

As noted above, the suggested analysis, which is provided in the checklist, leads decision-makers through the elements of the Convention refugee definition in a principled and logical way. The references in the boxes to the left are to the governing EU law, the EU Qualification Directive (QD) or the EU Asylum Procedures Directive (APD), which bind EU Member States, irrespective of whether these provisions have been incorporated into national law. However, the EU Directives set out minimum standards only for the protection of applicants for international protection pursuant to the Refugee Convention or subsidiary protection rules. This means that Member States may define or apply the refugee or subsidiary protection criteria more broadly than the strict terms of the Directive. This is confirmed by Article 5 of the EU Asylum Procedures Directive, which provides that “Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.”

As the concepts of refugee law are complex, further guidance may be useful on many of the topics which arise. The UNHCR has published interpretative Guidelines on both Membership of a Particular Social Group and Religion-based Persecution as well as Exclusion and IFA among many others. UNHCR has also provided observations through its publication: Thematic Compilation of Executive Committee (ExCom) Conclusions. For information on international case law relevant to the 1951 Convention, UNHCR has also published a Compilation of Case Law on the Refugee Convention.<sup>25</sup>

<sup>25</sup> All of these references are available on UNHCR’s website ([www.unhcr.org](http://www.unhcr.org)). In addition, UNHCR guidance and comments on EU legislation and policy in particular is available at [www.unhcr.org/eu](http://www.unhcr.org/eu). A full list of references can be found in the checklists in Annex 1.

## C. Nexus Analysis Checklist

The decision-maker must carefully and thoroughly collect all the facts surrounding the feared persecution in order to evaluate the reason why the persecutor is targeting or will target the applicant. An applicant may have a well-founded fear of persecution for more than one Convention ground. An applicant may have a fear of persecution upon return to his or her country - but if that persecution, or lack of protection, is not linked to a Convention ground, then the applicant is not a Convention refugee. The references in the checklist below are to the QD.

Article 1 A (2) of the 1951 Convention Relating to the Status of Refugees, as amended by its 1967 Protocol, defines a refugee. Article 2 (c) of the EU Qualification Directive (QD) incorporates this definition of a “refugee”:

*‘Refugee’ means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;*

“Reasons for Persecution/Nexus” refers to the connection between the feared persecution and a Convention ground. Article 10 (1) of the EU Qualification Directive provides guidance on the meanings of the five Convention grounds. For an applicant to be eligible for refugee status the persecution feared must be “...**for reasons of** race, religion, nationality, membership of a particular social group or political opinion”. [emphasis added]

Article 10 (2) of the EU Qualification Directive draws attention to the importance, when examining the reasons for persecution, that it is the persecutor’s perception of the applicant’s characteristics, which governs whether an applicant faces persecution, rather than the objective reality. This means that, as stated expressly in Article 10 (2):

*When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.*



# WRITTEN PROTECTION DECISION CHECKLIST

## Level III: Nexus Analysis

The Decision-Maker must carefully and thoroughly collect all the facts surrounding the feared persecution in order to evaluate the reason why the persecutor is targeting the applicant. An applicant may have a well-founded fear of persecution for more than one Convention ground. An applicant may have a fear of persecution upon return to his or her country but if that persecution is not tied to a Convention ground then the Applicant is not a Convention refugee. The references below are to the QD.

Article 1 A (2) of the Convention Relating to the Status of Refugees, as amended by the Protocol, defines a refugee. Article 2 (c) of the EU Qualification Directive [QD] sets out the definition of a “refugee”:

*“Refugee” means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;*

**Reasons for Persecution/Nexus** refers to the connection between the feared persecution and a Convention ground. Article 10 (1) of the EU Qualification Directive provides guidance on the meanings of the five Convention grounds. For an Applicant to be eligible for refugee status the persecution feared must be “...for reasons of race, religion, nationality, membership of a particular social group Or political opinion”. [Emphasis added] Note carefully Article 10 (2) of the EU Qualification Directive:

*When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.*

ISSUES	DETAILS	✓
<b>RACE</b> Article 10 (a)	“the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;”	
<b>RELIGION</b> Article 10 (b)	“the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;”	
<b>NATIONALITY</b> Article 10 (c)	“the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;”	
<b>MEMBERSHIP OF A PARTICULAR SOCIAL GROUP</b> Article 10 (d)	<p>“a group shall be considered to form a particular social group where in particular:</p> <ul style="list-style-type: none"> <li>members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, <b>and [Emphasis added]</b></li> <li>that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;</li> </ul> <p>depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;”</p> <p>The analysis of MSPG is one of the most difficult concepts in refugee analysis and has been the subject of innumerable articles and court cases. The UNHCR’s position is that a MSPG may fall within either of the above definitions but need fall within both. [See UNHCR Guidelines on Membership of a Particular Social Group.] It should be recalled that the EU Asylum Procedures Directive, Article 5 allows member states to give greater – but not less – protection to protection claimants in which case states are free to follow the UNHCR definition.</p>	
<b>POLITICAL OPINION</b> Article 10 (e)	“the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.”	

## D. Subsidiary Protection Analysis Checklist

As already noted, the basic rule in protection analysis is that one first analyses whether an applicant is entitled to Convention refugee status, and if he or she is not, then the analysis moves on to whether he or she qualifies for subsidiary protection.

Article 2 (e) of the EU Qualification Directive (QD) sets out the definition of a person eligible for subsidiary protection, and notes that it can only apply to a person “*who does not qualify as a refugee*”. The definition states that a:

*“person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom **substantial grounds** have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a **real risk of suffering serious harm as defined in Article 15**, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country... [emphasis added]*

Article 15 of the QD defines “serious harm”:

*Serious harm consists of:*

- (a) death penalty or execution; or*
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or*
- (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*

Consequently, in order for a person to qualify for subsidiary protection, it must be shown that there are substantial grounds to believe that if the person is returned to his or her country of origin or, if stateless, his or her country of former habitual residence, he or she would face a real risk of suffering serious harm. Article 15 defines serious harm. If any of the three grounds applies, and the standard of proof is met, then that person should be granted subsidiary protection.

The suggested analysis below leads one through the elements of the subsidiary protection definition in an orderly and principled way. The references in the boxes to the left are the governing EU law as laid out in the QD.

In some countries, where there is another form of protection offered by the State, the decision-maker may be required to analyse that as well if no entitlement to Convention refugee or subsidiary protection status is established. The checklist below deals exclusively with an analysis of whether an applicant qualifies for subsidiary protection status.



# WRITTEN PROTECTION DECISION CHECKLIST

## Level II: Subsidiary Protection Analysis

### GENERAL INSTRUCTIONS

As already noted the basic rule in protection analysis is that one first analyses whether an applicant is entitled to Convention Refugee status [CR] and if he or she is not, then the analysis moves on to whether he or she qualifies for Subsidiary Protection [SP]. [Note Article 2 (e) below requires this order of analysis.] In some countries, where there is a further discretionary protection offered by the state, the Decision Maker [DM] may be required to analyse that as well if no CR or SP status is established. This Checklist only deals with an analysis of whether an Applicant qualifies for SP status.

Article 2 (e) of the EU Qualification Directive [QD] sets out the definition of a person eligible for SP noting that it can only apply to a person “who does not qualify as a refugee”:

“person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom **substantial grounds** have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a **real risk of suffering serious harm as defined in Article 15**, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country... (emphasis added)

Article 15 of the QD defines ‘serious harm’:

Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Consequently, in order for a person to qualify for SP it must be shown that there are “substantial grounds” to believe that if the person is returned to his or her country of origin or, if stateless, his or her country of former habitual residence he or she would face a “real risk of suffering serious harm”. Article 15 defines “serious harm”. If any of the three grounds applies and the standard of proof is met then that person should be granted SP.

The suggested analysis below leads the DM through the elements of the SP definition in an orderly and principled way. The references in the boxes to the left are the governing EU law as laid out in the QD in all countries of the EU irrespective of whether these provisions have been incorporated into national law.

ISSUES	ISSUE DETAILS	✓
The Facts of the Claim Article 4	<b>THE FACTS:</b> The DM will have already established the facts in the case – through the assessment of credibility, including COI – when analysing CR. Now, the DM needs to turn his or her attention to whether the facts accepted qualify the Applicant for SP.	
Article 15 (a)	<b>DEATH PENALTY OR EXECUTION:</b> If the facts do not disclose that there are “substantial grounds” to believe that the applicant would, upon return to his or her country – or if stateless, country of former habitual residence – face a “real risk of serious harm” for these reasons then the DM will move on to an analysis of Article 15 (b).	
Article 15 (b)	<b>TORTURE OR INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:</b> If the facts do not disclose that there are “substantial grounds” to believe that the applicant would, upon return to his or her country – or if stateless, country of former habitual residence – face a “real risk of serious harm” for these reasons then the DM will move on to an analysis of Article 15 (c).	
Article 15 (c)	<b>SERIOUS AND INDIVIDUAL THREAT TO A CIVILIAN’S LIFE OR PERSON BY REASON OF INDISCRIMINATE VIOLENCE IN SITUATIONS OF INTERNATIONAL OR INTERNAL ARMED CONFLICT:</b> Subsection (c) is the most complicated area in analysing SP; it has been litigated frequently within the EU. The leading case in EU law is that of <i>Elgafaji</i> (ECJ, Feb, 2009) which established, among other things, that a person can be eligible for SP simply by being on the territory in question where the level of violence pursuant to subsection 3 is sufficiently extreme – even without being personally targeted.  If the facts do not disclose that there are “substantial grounds” to believe that the applicant would, upon return to his or her country or country of former habitual residence, face a “real risk of serious harm” for these reasons then the applicant is not entitled to SP.	
Protection Article 7	<b>PROTECTION:</b> Where a DM has decided that the applicant falls within the SP definition he or she will need to apply the same principles with respect to SP as applied to the analysis of CR status.	
IFA Article 8	<b>INTERNAL FLIGHT ALTERNATIVE:</b> In countries where IFA is applied and where a DM has decided that the applicant falls within the SP definition he or she will need to apply the same principles with respect to SP as applied to the analysis of CR status.	



## E. Internal Flight Alternative Analysis Checklist<sup>26</sup>

Neither the 1951 Convention nor the EU Qualification or Asylum Procedures Directives require or suggest that the fear of being persecuted or being at risk of serious harm need always extend to the *whole* territory of the refugee's country of origin. The concept of an internal flight or relocation alternative may therefore be applied if there is a specific area of the country, where the applicant could relocate safely, legally and practically, and where there is no risk of a well-founded fear of persecution, nor risk of serious harm and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him or herself and live in security under reasonable conditions.

Consequently, if internal flight or relocation is to be considered in the context of refugee status determination, a particular area must be identified by the decision-maker which fulfils the requisite criteria. Based on the general legal principle that the burden of proving a fact rests on the person who asserts it, it is for the authorities who allege that the applicant can find protection in another part of the country to identify the proposed area of relocation and provide evidence establishing that it is a relevant and reasonable alternative for the applicant. The claimant must also be provided with an adequate opportunity to prepare or respond to the alleged availability of protection and whether it is reasonable for him or her to settle there.

However, where the feared persecution emanates from a State actor, internal flight or protection alternative may be presumed not to exist because ordinarily the State authorities exercise authority throughout the country.

Many countries do not consider nor apply the IFA concept; and so the checklist will not be relevant.

Where the concept is applicable, the consideration of whether an IFA would apply in a given case requires a two-fold analysis: (i) Is an IFA relevant? (ii) If an IFA is relevant, is it reasonable? The burden of establishing that an IFA may apply in a given claim falls on the decision-maker. He or she must identify a *specific* IFA location (for instance, the name of a town) and give the applicant adequate notice of his or her intention to apply the concept, so that the applicant may prepare a response if necessary.

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<sup>26</sup> In Article 8 of the QD the concept is referred to as "Internal Protection."



# WRITTEN PROTECTION DECISION CHECKLIST

## Level III: Internal Flight Alternative Analysis

### GENERAL DIRECTIONS

Neither the 1951 Convention nor the EU Directives require or even suggest that the fear of being persecuted or at risk of serious harm need always extend to the whole territory of the refugee's country of origin. The concept of an internal flight or relocation alternative therefore refers to a specific area of the country where there is no risk of a well-founded fear of persecution or risk of serious harm and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him or herself and live a reasonably normal life. Consequently, if internal flight or relocation is to be considered in the context of refugee status determination, a particular area must be identified by the Decision Maker and the claimant provided with an adequate opportunity to prepare or respond.

The analysis of whether an IFA would apply in a given case requires a two-fold analysis: (i) Is an IFA "relevant"? (ii) If an IFA is relevant is it "reasonable"? The "burden" of establishing that an IFA may apply in a given claim falls on the decision maker who must identify a specific IFA [town] and give the applicant adequate notice of it so that he or she may prepare and able to respond.

ISSUES	ISSUE DETAILS	✓
<b>STEP I: IDENTIFICATION OF THE IFA</b>	If the Decision Maker intends to rely upon a possible IFA, then the burden to identify a specific location is on him or her and the applicant must be provided with adequate notice and the opportunity to respond.	
<b>STEP II: THE RELEVANCE TEST</b>	Given the circumstances of the particular case is an IFA relevant? In other words, if the applicant were able to relocate would he or she be able to safely, legally and practically get to the suggested IFA?	
Is the IFA Accessible?	Can an applicant reach the IFA safely, practically and legally?	
Is the Agent of Persecution the State?	It is a presumption that states are in full control of their territory such that if the state is the persecutor an IFA is not possible. However, as with any presumption, this can be displaced with evidence that in any particular case a state is not in control of an area where an IFA may exist.	
Is the Agent of Persecution a non-state Agent?	If a non-state agent is the feared persecutor or the potential cause of a risk of serious harm then an IFA will only be relevant if (a) that agent will not pursue the applicant or if he or she does so (b) there will be effective state protection.	
Is the applicant at risk of other persecution or serious harm?	If the applicant would be at risk of persecution or serious harm in the IFA or would be exposed to new forms of persecution or serious harm then the IFA is not relevant.	
<b>STEP III: THE REASONABLENESS TEST</b>	Only if an IFA is relevant is it necessary to proceed to the second step of determining whether, in all the circumstances of this Applicant's case, the IFA is "reasonable". An IFA is only "reasonable" if the applicant is able to live a relatively normal life there free from undue hardship.	
What are the applicant's personal circumstances?	Many factors, taken either individually or collectively, must be weighed in establishing whether this particular applicant could live a relatively normal life there free from undue hardship. Factors include such things as: age, gender, health, disability, family situation and relationships, ethnicity, religion, cultural, social and political factors, language, education, professional and work background and opportunities and so on.	
Has the applicant suffered past persecution?	Will the relocation to the IFA increase the likelihood of further trauma based upon past persecution or serious harm?	
Will the applicant be safe and secure?	Is the area in which the IFA is located currently stable such that it may provide safety, security and is the political situation reasonably durable? This is particularly relevant in situations of internal political or armed conflict.	
Does the administration in the IFA respect human rights?	Are specific fundamental human rights which are important to the individual respected in the area of the IFA?	
Can the applicant survive economically?	Can the applicant make a reasonable living in the IFA?	

## F. Exclusion Analysis Checklist

Exclusion clauses generally will not apply in the examination of a protection claim. However, a decision-maker needs to be aware, when gathering and reviewing the facts in any given case, if there may be an indication that the applicant has been involved in crimes pursuant to Article 1 F of the Convention. This provision states:

*The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:*

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.*

The exclusion clauses are designed to exclude from recognition as a refugee or beneficiary of subsidiary protection applicants who have committed international crimes so severe as to remove from them the right to international protection. Given the seriousness of this consequence, exclusion clauses must be applied restrictively and with great care, and only after a full assessment of the individual circumstances of the case. They are only relevant for consideration after a person has been found to need protection. Exclusion should therefore only ever be considered after the examination of inclusion.

The exclusion provisions are reflected in EU law under Article 12 - Exclusion from refugee status and Article 17 - Subsidiary Protection of the QD. Of note is the fact that the provisions for exclusion, when applied to subsidiary protection under the QD, differ from those applying under the refugee analysis. It is the responsibility of the decision-maker to establish that an applicant is excludable; the serious reasons referred to require a standard of proof that is less than a balance of probabilities.

Article 17 (3) of the QD states that:

*Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.* [emphasis added]



### CONVENTION, ARTICLE 1 F:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

The rationale for the exclusion clauses is to deny protection to applicants who have committed international crimes so severe as to remove from them the right to international protection. Given the seriousness of this consequence this clause must be applied restrictively and with great care and only after a full assessment of the individual circumstances of the case. Exclusion need not be analysed unless there is a tentative determination that the applicant is entitled to protection and there are serious reasons for considering that exclusion may be an issue.

The Exclusion provisions are incorporated into European law under provisions of the QD. While the QD provision on refugees [Article 12] closely mirrors the Convention definition as outlined above, Article 17 [Subsidiary Protection] differs somewhat. The definition of a “serious” crime does not require that it be “non political” nor committed “outside the country of refuge” nor “prior to his or her admission as a refugee”. Sub paragraph 3 also adds a further provision:

Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

It is the responsibility of the decision maker to establish that an applicant is excludable; the “serious reasons” referred to require a standard of proof that is less than a balance of probabilities.

ISSUES	ISSUE DETAILS	✓
ARTICLE 1 F (a)	<i>F: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.</i>	
Crimes Against Peace	According to the London Charter a <b>crime against peace</b> involves the “planning, preparation, initiation or waging of a war of aggression, or a war in violation international treaties, agreements, or assurances, or participation in a common conspiracy for the accomplishment of any of the foregoing”. Given the nature of this crime, it can only be committed by those in a high position of authority representing State or a State-like entity. In practice, this provision has rarely been invoked.	
War Crimes	Certain breaches of international humanitarian law constitute <b>war crimes</b> . Although such crimes can be committed in both international and non-international armed conflicts, the content of the crimes depends on the nature of the conflict. War crimes cover such acts as wilful killing and torture of civilians, launching indiscriminate attacks on civilians, and wilfully depriving a civilian or a prisoner of war of the rights of fair and regular trial.	
Crimes Against Humanity	The distinguishing feature of <b>crimes against humanity</b> , which cover acts such as genocide, murder, rape and torture, is that they must be carried out as part of a widespread or systematic attack directed against the civilian population. An isolated act can, however, constitute a crime against humanity if it is part of a coherent system or a series of systematic and repeated acts. Since such crimes can take place in peacetime as well as armed conflict, this is the broadest category under Article 1F(a).	
International Instruments	Amongst the various international instruments which offer guidance on the scope of these international crimes are the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the four 1949 Geneva Conventions for the Protection of Victims of War and the two 1977 Additional Protocols, the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the 1945 Charter of the International Military Tribunal (the London Charter), and most recently the 1998 Statute of the International Criminal Court.	



<b>ARTICLE 1 F (b)</b>	<i>F: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.</i>	
Serious	'Serious' refers to the nature of the crime. The nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, the nature of the penalty, and whether most jurisdictions would consider it a serious crime are all relevant factors. Consequently, while murder, rape and armed robbery would be serious offences, petty theft would not.	
Non-Political Crime	There must be a link between the crime and its alleged political objective; the act in question must also be proportionate to the political objective. Terrorist-type actions which are generally disproportionate to any political objective will normally be 'non-political'. <b>[Applicable only to "refugee" analysis]</b>	
Outside Country of Refuge	The crime must have been committed outside the country of refuge and before the applicant applied for protection. If the crime was committed after admittance, then the country's criminal laws come into play. <b>[Applicable only to "refugee" analysis]</b>	
<b>ARTICLE 1 F (c)</b>	<i>F: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.</i>  As the purposes and principles of the United Nations are quite broad, the scope of this category is unclear and rarely applied except in extreme circumstances. Where an activity attacks the very basis of the international community's coexistence. Such activity must have an international dimension. It would appear that, generally speaking, only persons who have been in positions of power in a State or State-like entity would appear capable of committing such acts. While some terrorist activities may apply here they may also be covered under Article 1 F (b).	
<b>QD: ARTICLE 17 (3)</b>	Has the applicant committed (i) one or more crimes – not listed in paragraph 1 – prior to his or her admission to the Member State which would be punishable in the Member State with imprisonment and (ii) left his or her country of origin solely in order to avoid punishment for these crimes?	
<b>FACTORS TO CONSIDER</b>	Apart from a thorough consideration of all the facts in the claim, a decision maker must always consider the factors listed below.	
Individual Responsibility	For exclusion to be justified, individual responsibility must be established. This can occur where an individual has committed, or made a substantial contribution to the act in question knowing that his or her contribution would facilitate the criminal act. While a presumption may arise due to the person's senior position in an organisation the decision maker must still consider the organisational structure and the person's actions. The mental element [mens rea] must also be present.	
Defences	<b>Duress</b> may be a defence where the person was in imminent danger to his or her life or to continuing serious bodily harm and the act he or she perpetrated is not more serious than the act feared. <b>Superior Orders</b> may apply only where the applicant was legally obliged to obey the orders, the order itself was not obviously unlawful and the applicant was not otherwise aware that the order was unlawful. In some cases, where an applicant has already been appropriately punished for the crime, exclusion may no longer apply; although in the case of particularly heinous crimes this exception may not apply.	
Proportionality	The incorporation of a proportionality test when considering exclusion and its consequences provides a useful analytical tool to ensure that the exclusion clauses are applied in a manner consistent with the overriding humanitarian object and purpose of the 1951 Convention. The concept has evolved in particular in relation to Article 1F(b) and represents a fundamental principle of many fields of international law. As with any exception to a human rights guarantee, the exclusion clauses must therefore be applied in a manner proportionate to their objective, so that the gravity of the offence in question is weighed against the consequences of exclusion. Such a proportionality analysis would, however, not normally be required in the case of crimes against peace, crimes against humanity, and acts falling under Article 1F(c), as the acts covered are so heinous. It remains relevant, however, to Article 1F(b) crimes and less serious war crimes under Article 1F(a).	

## 5. THE COI Checklist

When assessing Country of Origin Information (COI) in the context of deciding on protection claims, decision-makers will find the following nine questions, developed by the International Association of Refugee Law Judges, useful. They aim to assist in determining what weight should be given to a particular piece of COI:

### Relevance and adequacy of the Information

- i) How relevant is the COI to the case in hand?
- ii) Does the COI source adequately cover the relevant issue(s)?
- iii) How current or temporally relevant is the COI?

### Source of the Information

- iv) Is the COI material satisfactorily sourced?
- v) Is the COI based on publicly available and accessible sources?
- vi) Has the COI been prepared on an empirical basis using sound methodology?

### Nature / Type of the Information

- vii) Does the COI exhibit impartiality and independence?
- viii) Is the COI balanced, and not overly selective?

### Prior Judicial Scrutiny

- ix) Has there been judicial scrutiny by other national courts of the COI in question?

A further very useful study on the use of COI in the European context was undertaken by the Hungarian Helsinki Committee (HHC).<sup>27</sup> A follow-up on the HHC Report – which has been funded by the ERF, UNHCR, the IARLJ, and ACCORD amongst others – will be concluded in September 2011.

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<sup>27</sup> Hungarian Helsinki Committee, Country Information in Asylum Procedures, 2007, at: <http://helsinki.hu/Kiadvanyaink/htmls/552>





# CHAPTER V:

## BUILDING IN QUALITY

### - THE ROLE OF THE QUALITY AUDIT TEAM

#### 1. Introduction

The FDQ Project, as well as other initiatives and projects relating to quality, supports the creation and use of systematic quality assurance mechanisms in all EU Member States. The structure proposed in FDQ participating States is the establishment of a Quality Audit Team with responsibility for this task, working closely with other parts of the concerned national asylum authorities. The QAT is a key element to guarantee that the quality systems and processes, once established, will in fact function as intended. In some countries, the QAT operates separately from – though in close cooperation with – personnel responsible for training in the asylum authorities. Close linkages between the two are encouraged, as the results obtained from quality assessments or reviews can serve to identify weak areas in asylum processes, which targeted training may address.

The forms which follow are all contained in full size in the Annex I. Two key factors come into play when using these forms. Firstly, they should address the key issues in protection adjudication but not be so thorough or overly long that they become difficult to use.

Secondly, giving numerical weight to each factor requires very careful consideration, as not all factors are equal. For example, authorities in some countries have chosen to give a numerical mark for each factor. This can be done for a variety of reasons. Care must, however, be taken that the weighting is appropriate. For example, a mark of “1” for a misspelled name and a “2” for a failure to analyse properly a key protection issue would be unreasonable. The differentiation would need to be much greater. Care must also be taken not to penalize strictly too many minor issues. Each country is entitled to reflect in its system those particular issues important to it, to encourage specific attention to those priorities. However, where numerical values are being used, the weighting must be done with caution.

As each country has its own laws and asylum procedures, the following generic assessment forms are intended for use as guides. They may benefit from adaptation or modification to address national specificities. However, in their general form, they do highlight very important areas. It should also be noted that an inspiration for these forms has been the UNHCR Quality Team in the UK, which devised variants of these several years ago, as part of the UNHCR-UK Border Agency (UKBA) Quality Initiative Project.<sup>28</sup> That project has provided inspiration and tools to guide quality work in many other countries.

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<sup>28</sup> For further information on the UKBA Quality Initiative, see: <http://webarchive.nationalarchives.gov.uk/20100503160445>, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/>.



## 2. The Claim Registration Stage

The QAT needs, at the outset, to examine the registration stage. This is needed to ensure that the information being collected and distributed is relevant and legally correct, that the collection is undertaken in an appropriate way, and that the performance of the staff meets relevant standards. This review need not occur in all cases on a regular basis; occasional spot checks could suffice, or a review might be initiated in response to some identified problems.

The importance of the claim registration stage cannot be overstated. Information collected by government authorities can help narrow down issues in a claim and reduce the need to spend important interview time on subsidiary issues. Too many interviews suffer because basic personal or biographical data has not been collected at this stage. Consequently, valuable hearing time may be spent collecting data on travel routes, education, work experience and so on.

It is at the registration stage that an authority needs to provide information to an applicant, as well as an opportunity for him or her to meet with UNHCR or a legal adviser or counsellor, and to prepare for an interview.

The following assessment form provides a list of some of the areas that require analysis.



ASSESSOR:		PERSON TO WHOM FEEDBACK PROVIDED:	
OFFICE ASSESSED:		DATE FEEDBACK PROVIDED:	
ASSESSMENT DATE:		INTERPRETER PRESENT:	

**A. Border Procedures**

Part A is for use with respect to border guards or any other personnel to whom an applicant is likely to have initial contact

	Location:		
	Date of Visit:		
	<b>ASSESSMENT CRITERIA</b>	<b>COMMENTS</b>	✓
1	Do the personnel who are likely to be addressed by the applicant at the border or on the territory of the Member State have instructions for dealing with applicants who wish to make a claim for international protection, including any instruction to forward on the applicants and all relevant information? [APD: Article 6 (5)]		
2	Have the personnel received the necessary training to identify a person potentially in need of or seeking protection, and to proceed further in accordance with those instructions?		
3	What information is available to applicants on how to make a claim for international protection? [APD: Article 10 (1) (a)]		
4	What information is available to applicants on the provision of legal assistance? [APD: Article 15]		
5	What information is available to applicants about his or her right to consult with the UNHCR? [APD: Articles 10 (1) (c), 21]		
6	Is appropriate interpretation available? [APD: Article 10 (1) (b)]		
7	Is there an opportunity to seek oral advice or clarification from the authorities on any of the above-mentioned matters?		

**B. The procedure for making a claim for international protection**

Part B is for use with respect to the place where an applicant is referred to make a claim for international protection ("the designated place" – APD Article 6(1))

	Location:		
	Date of Visit:		
	<b>MANAGEMENT</b>	<b>COMMENTS</b>	✓
1	Are there measures in place to ensure that all accompanying family members/ dependants are registered?		
2	Are there written procedures to facilitate the making of a claim for international protection?		
3	Do these procedures include clearly defined responsibilities and staff assignments?		
4	Are there oversight mechanisms to ensure that procedures are being followed?		
	<b>THE PROVISION OF INFORMATION</b>	<b>COMMENTS</b>	✓
5	Is information made available to the applicant which explains the procedure for making a claim for international protection as well as the various stages of the RSD process including the review/appeal procedures and available assistance for applicants in these procedures? [APD: Articles 10 (1) (a)]		
6	Are there measures in place to ensure that an applicant is aware of the refugee/ subsidiary protection criteria? [APD: Article 10 (1) (a)]		
7	Are there measures in place to ensure that the applicant is aware of the need to produce any necessary supporting documentation? [APD: Article 10 (1) (a) and AQD: Article 4]		

THE PROVISION OF INFORMATION		COMMENTS	✓
8	Are there measures in place to ensure that applicants understand their rights and obligations? [APD: Article 10, 11]		
9	Are there measures in place to ensure that the applicant is aware of any laws and procedures that affect the reception conditions/rights of applicants (i.e. work restrictions/living restrictions)?		
10	Is information available to applicants on their right to seek legal assistance? [APD: Article 15]		
11	Is information available to applicants on their right to consult with the UNHCR? [APD: Article 10 (1) (c)]		
12	Are there measures in place to ensure that each adult is aware of the right to make a separate application for asylum on his or her own behalf? [APD - Art 6 (2)]		
13	Are there measures in place to ensure that dependent adults consent to the making of an application on their behalf? [APD: Art 6 (3)]		
14	Are there any measures in place to ensure that unaccompanied and separated children (UASC) are aware of the RSD process? [APD: Article 10 (1) (a)]		
15	Are there any measures in place to ensure that unaccompanied and separated children have access to legal representatives? [APD: Art 17]		
16	Are there measures in place to ensure that dependants understand derivative status? [APD: Article 10 (1) (a)]		
17	Are there measures in place to advise the applicant of the right to confidentiality? [APD: Article 22]		
18	Are there measures in place to allow the applicant to request that Registration or RSD interviews be conducted by staff and interpreters of a sex preferred by the applicant?		
THE ENVIRONMENT WHERE THE APPLICANT MAKES A CLAIM FOR INTERNATIONAL PROTECTION		COMMENTS	✓
19	Is the area private? <i>Elaborate on any privacy issues including whether the applicant's name or details may be made publicly available</i>		
20	Are appropriate interpreters available, including to support applicants make their application? [APD: Art. 10 (1) (b)]		
21	Are there facilities for dependent children? <i>Comment on whether there are separate and appropriate facilities for children</i>		
22	Is the area appropriate for children making an application in their own right? If not, why not?		
23	Is there any other relevant information?		
THE SCREENING/ROUTING PROCESS		COMMENTS	✓
24	What information is obtained from the applicant that may be used in the RSD interview?		
25	Are there measures in place to identify promptly applicants who may have special protection or assistance needs? (i.e. victims of torture/trafficking victims/gender issues/children)		
26	Are there measures in place to assess the type of protection needs of the applicant and for referring to the appropriate procedure where required? (i.e. accelerated/regular process/STC/trafficking/Dublin Regulation)		

### 3. The Interview Stage

This constitutes the heart of the asylum process. This Manual has emphasized the importance of making an applicant feel at ease so that the interview is able to generate all the necessary facts. This will enable the decision-maker to understand comprehensively the claim and be prepared to make a correct decision. In any analysis of an asylum system, this stage will require the greatest focus, because so much is required of a decision-maker, as made clear in the following form. For this reason we have chosen to include an extensive list of factors for consideration in any review.

## D INTERVIEW ASSESSMENT FORM Page 1/3

CASE NUMBER:		SPECIFIC NEEDS/ VULNERABLE APPLICANT:	
INTERVIEWER:		LEGAL ASSISTANT/COUNSEL/ GUARDIAN/UNHCR:	
BRANCH OFFICE:		INTERPRETER PRESENT:	
REVIEWER:		LANGUAGE SPOKEN:	
APPLICATION DATE:		SEX OF CLAIMANT:	
INTERVIEW DATE:		SEX OF INTERVIEWER:	
START TIME (ACTUAL):		SEX OF INTERPRETER:	
END TIME:		TYPE OF RECORDING:	
ESTABLISHED NATIONALITY OF CLAIMANT:		FEEDBACK PROVIDED:	

**AS = Asylum-Seeker, IV = Interviewer**

CRITERIA TO BE ASSESSED	ASSESSMENT	COMMENTS		
		YES	NO	N/A
<b>OPENING THE INTERVIEW</b>				
1	Have all attendees been <b>introduced</b> by name, function and tasks at the beginning of the interview?			
2	Was AS asked whether he/she felt physically and psychologically fit for the interview and whether he/she was <b>willing</b> to answer IV's questions? Was AS asked whether he/she understood the interpreter and whether he/she had any objections to the sex or otherwise of the IV or interpreter? Where applicable, if AS showed <b>signs of unfitness</b> , did IV react appropriately? (break, drink, postponement of interview)			
3	Was AS informed about the <b>purpose and objective</b> of the interview? a) to establish the facts of the claim in order to determine whether AS is entitled to protection; b) Sensitive issues may arise during the interview but it will be necessary for AS to recount what has happened as frankly as possible; if a break is needed AS should ask; c) the contents of the interview are to be treated <b>confidentially</b> ; d) <b>no information</b> is to be <b>shared</b> with the authorities of AS' country of origin without his/her express direction and consent; e) the <b>attendees' legal obligation</b> to keep information <b>confidential</b> (IV, typist, interpreter and UNHCR); f) the attendees' <b>rights and obligations</b> (e.g. duty to cooperate, obligation to tell the truth) – and the consequences of a violation; g) he/she should indicate any <b>communication and comprehension</b> difficulties; h) the possibility to be supported by <b>counsellor or a legal adviser</b> ; i) the <b>rights of the legal representative</b> , where applicable.			

	CRITERIA TO BE ASSESSED	ASSESSMENT			COMMENTS
		YES	NO	N/A	
<b>THE KIND OF QUESTIONING</b>					
4	Was an <b>open atmosphere of trust</b> (correct, objective, factual and fair) established and maintained during the interview? a) Was there a <b>warm-up</b> phase? b) Continuous <b>eye contact</b> (unless culturally inappropriate); c) Addressing AS <b>directly</b> (not via the interpreter); d) Appropriate <b>body language</b> ; e) Offering <b>breaks</b> (when necessary and at interviews lasting more than 2 hours); f) Appropriate and correct speaking tone.				
5	Was it apparent that <b>IV had conducted relevant research</b> for the interview by consulting: a) <b>Evidence</b> submitted by AS prior to the interview such as statements made at the entry point or initial screening of supporting documents provided, b) relevant <b>COI</b> ?				
6	Was IV considerate of <b>AS' condition</b> (e.g. strong affects like fear, trauma, aggression or fatigue) and did he/she react appropriately and with the necessary sensitivity?				
7	Was IV considerate of <b>AS' cultural or gender background</b> (e.g. cultural and social status of women, etc.) or special needs?				
8	Was AS given <b>enough time</b> to tell his/her story as <b>freely</b> as possible?				
9	Did IV keep his/her questions <b>short and easy</b> , adjusted to AS' education level, and did he/she ask only one question at a time?				
10	Were <b>open questions</b> asked to start with a topic, and <b>closed questions</b> to specify?				
11	Were used <b>legal terms</b> sufficiently explained?				
12	Did IV do a proper <b>follow-up</b> on all relevant issues raised by AS by posing subsequent questions?				
13	Was AS asked questions checking the <b>credibility</b> of his/her statements only after he/she could <b>freely talk</b> about his/her reasons for flight?				
14	Were neutral questions without judging asked to clear up <b>inconsistencies [external or internal]</b> ?				
15	Where applicable, was IV considerate of problems regarding AS' <b>credibility</b> , arising from questioning <b>women</b> on their <b>male family members'</b> statements? [UNHCR, <i>Interviewing Applicants for Refugee Status</i> , p.23: "In certain cultures men do not share the details of their professional, political, military or social activities with their female family members."]				
16	Did IV avoid any <b>critical or judgemental attitude</b> (verbal and non-verbal)?				
<b>ESTABLISHING THE SUBSTANCE OF THE CLAIM</b>					
17	Were all the <b>key elements</b> (who, what, why, when and where) of the basis of claim clearly established? (At the end of the interview, no questions remain that could have been asked, or if asked, clarified.)				
18	Did IV's enquiries <b>cover all relevant declarations</b> brought forward by AS?				
19	Was AS asked about his/her fear of persecution or serious harm <b>upon return</b> to his/her country of origin?				
20	Was AS' <b>Convention reason(s)</b> /lack of Convention reason(s) examined?				

CRITERIA TO BE ASSESSED	ASSESSMENT			COMMENTS	
	YES	NO	N/A		
21	Were AS' <b>Subsidiary Protection grounds (or lack of)</b> examined?				
22	Where applicable, did IV establish whether AS had already sought <b>protection in his/her home country?</b>				
23	Where applicable, did the IV establish whether or not <b>internal relocation</b> was relevant and reasonable?				
24	Where applicable, was any <b>adverse COI evidence</b> put to the applicant and was he/she given the opportunity to respond?				
<b>CONTROLLING THE INTERPRETER</b>					
25	Did IV sufficiently <b>verify the understanding</b> between the interpreter and AS?				
26	Was the interpreter <b>sufficiently fluent</b> in the language of the host country?				
27	Where applicable: Did the interpreter stop the speakers in situations where it was <b>impossible to translate?</b> If not, did the IV do so?				
28	Did the interpreter avoid <b>changing or summarizing</b> the content or the meaning of what had been said or changing the level of language?				
29	Where there was reason to believe that not all of what the claimant had stated was interpreted, or in cases of unclear translation, did IV seek <b>clarification</b> from the interpreter?				
30	Did the interpreter avoid <b>commenting</b> upon the evidence and, instead, stick to strict interpretation?				
31	Did IV avoid misusing the interpreter as an <b>expert for COI, culture, etc.?</b>				
32	Where applicable, did IV provide any <b>feedback</b> to the interpreter with a view to improve the latter's interpretation services in the future?				
<b>RIGHTS OF THE PARTIES</b>					
33	Did IV accurately <b>summarize</b> AS' statements / main reasons for flight and did he give AS the opportunity to exercise his/her <b>right to be heard</b> and to comment?				
34	Was AS given the opportunity to exercise his/her <b>right to be heard</b> and to comment on the (provisional) results of the gathering of evidence?				
35	Was AS' legal <b>advisor/representative</b> given the opportunity to exercise his/her rights (questions, comments, applications, etc.)?				
<b>CLOSING THE INTERVIEW</b>					
36	Was the interview <b>recorded</b> in compliance with the <b>EU Procedures Directive</b> and does the written report contain all essential information as stipulated in Art. 4 (2) EU Qualification Directive?				
37	Did the interpreter <b>retranslate</b> the complete written report to AS, and was the AS given the opportunity to <b>amend or correct</b> the transcript and provided with a copy of it?				
38	Was AS given the opportunity to ask <b>additional questions?</b>				
39	If the AS was requested to produce <b>further evidence</b> was he/she granted an appropriate <b>time-limit</b> within which to do so?				
40	Did IV advise AS at the end of the interview of the <b>next procedural steps?</b>				

## 4. The Written Decision Stage

The written decision is the document which communicates the results of the interview and the decision-maker's assessment of the applicant's protection needs. It must be clearly written, provide a clear and convincing analysis of the facts, COI and law relevant to the applicant's claim, and convey a decision which is supported by that analysis. There are many factors involved. The following Decision Assessment Form sets them out in a clear manner. It also serves to put the focus on the most important aspects to a good decision.

This Decision Assessment Form can be usefully employed in conjunction with the Judge's Checklist (see below Chapter VI). Both will be of considerable use to the QAT, although the focus differs because of the use to which each is put.

### E DECISION ASSESSMENT FORM

Page 1/2

CASE NUMBER:		ESTABLISHED NATIONALITY OF CLAIMANT:	
DECISION-MAKER:		NATURE OF DETERMINATION:	
APPLICATION DATE:		REVIEWER:	
INTERVIEW DATE:		ASSESSMENT DATE:	
DECISION DATE:		FEEDBACK PROVIDED:	

CRITERIA TO BE ASSESSED		ASSESSMENT			COMMENTS
		YES	NO	N/A	
<b>INTRODUCTORY INFORMATION</b>					
1	Does the decision state the correct name, date of birth, nationality/country of origin, and Asylum Service reference number?				
2	Does the decision contain information as regards review and appeal rights? [APD: Article 9(2); See also APD: Article 39]				
<b>BASIS OF CLAIM</b>					
3	Does the decision state the basis upon which the claim is made or as disclosed by an examination of the facts?				
4	Does the decision clearly set out all of the core/material facts of the claim, including who, what, why, when, where?				
5	Does the decision correctly identify the persecution/ill-treatment claimed by the applicant?				
6	Is the decision forward looking? Does the decision correctly identify in relation to any future persecution/ill-treatment feared on return the "who, what, why, where" elements?				
<b>DETERMINATION</b>					
7	Does the decision provide a short statement of the determination?				
<b>LEGAL ANALYSIS</b>					
8	Does the decision give due consideration to all core/material facts of the claim?				
9	Does the decision state clearly and give sound reasons as to which core/material facts of the claim are accepted and why, or, if not, why not?				
10	In relation to the credibility assessment, does the decision-maker appropriately use objective information (precise and up to date) such as COI? [APD: Article 8 (2) (b) ]				
11	Has the correct burden of proof been applied? [QD: Article 4]				
12	Has the correct standard of proof been applied?				

CRITERIA TO BE ASSESSED	ASSESSMENT			COMMENTS
	YES	NO	N/A	
<b>REFUGEE CONVENTION ANALYSIS</b>				
<b>a. Past Persecution</b>				
13	Does the decision-maker reach an objectively reasoned conclusion as to whether the applicant has been in the past subject to persecution or to direct threats of persecution? [QD: Article 4 (4)]			
14	Has the decision-maker correctly identified the agent(s) of persecution? [QD: Article 6]			
<b>b. Future Fear</b>				
15	Does the decision-maker reach an objectively reasoned conclusion as to whether the applicant has a well-founded fear of persecution on return? [QD: Article 4 (4)]			
16	Does the decision-maker apply the correct standard of proof? A well-founded fear of persecution must be proved to be 'reasonably possible' [UNHCR (2001) Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees, para 10]			
<b>c. State Protection</b>				
17	Does the decision-maker objectively reason whether state protection is available? [QD: Article 7]			
18	Has the decision-maker taken into account the applicant's personal circumstances when evaluating whether there would be effective state protection for him/her if s/he should return?			
<b>d. Convention Reason</b>				
19	Does the decision correctly and thoroughly assess whether a Convention reason(s) applies in the case (either as explicitly stated by the applicant or as identified by the decision-maker). [QD: Article 10]			
<b>e. IFA (Internal Flight Alternative)</b>				
20	If an IFA is relevant (safe, reasonable, and practical), does the decision-maker objectively reason whether an internal flight alternative is available? [QD: Article 8]			
21	If an IFA has been proposed by the decision maker, did the decision-maker examine the applicant's personal circumstances when evaluating whether it would be safe and reasonable for the applicant to relocate?			
<b>SUBSIDIARY PROTECTION ANALYSIS</b>				
22	Does the decision-maker objectively reason whether the applicant would be, upon return to his/her country of origin, at risk of facing the death penalty or execution? [QD: Article 15 (a)]			
23	Does the decision-maker objectively reason whether the applicant would be, upon return to his/her country of origin, at risk of torture or inhuman or degrading treatment or punishment? [QD: Article 15 (b)]			
24	Does the decision-maker objectively reason whether the applicant would be, upon return to his/her country of origin, at risk of a serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict? [QD: Article 15 (c)]			
25	Does the decision-maker objectively reason whether state protection is available?			
26	Where an IFA is relevant has the decision-maker properly analysed it as per Q.20 and Q.21?			
<b>HUMANITARIAN PROTECTION</b>				
27	Has the decision-maker identified and assessed any national humanitarian grounds that may be relevant?			
<b>OTHER COMMENTS OR OBSERVATIONS</b>				





# CHAPTER VI:

## THE ROLE OF THE JUDICIARY

### 1. Introduction

There is a wide variance in acceptance rates for asylum claims in different Member States of the European Union. The EU is aiming at a Common European Asylum System by 2012. EU Directives and Regulations have been adopted, which seek to help develop a common approach to asylum procedures, and to define common terms in the protection lexicon. Member State asylum authorities have developed a European Asylum Curriculum aimed at providing standardized training in EU protection law for first instance decision-makers. The European Asylum Support Office (EASO) has come into being, with a mandate to facilitate practical cooperation between EU Member State asylum authorities. All are aimed at reducing the considerable divergences in acceptance rates across the Union. However, at this moment, different countries are interpreting the same refugee and subsidiary protection definitions in very different ways. This leads to several undesirable consequences. While many factors influence asylum-seekers' movements, some observers consider that applicants will try to reach the country which is perceived to give them the most favourable chance of obtaining protection. Countries granting protection more often may resent the fact that other Member States are not recognizing claims in the same proportions. To illustrate the current divergences, protection rates in 2010 across EU Member States which received the largest numbers of claims varied, for Afghan asylum-seekers, from approximately 10% to 62%; for Iraqis, from close to 11% to 79%; and for Somali claimants, from close to 34% to 89%.<sup>29</sup>

While the Asylum Procedures Directive requires an effective remedy at second instance with respect to a negative decision on a protection claim, the national courts or tribunals, which fulfill this function, vary greatly in their scope of jurisdiction, methods, resources, experience and expertise. Some judges sit on specialized tribunals, where they hear only refugee cases, while others may hear a very small number of refugee cases a year, which is insufficient to develop familiarity with the issues. This is a particular concern for heavily burdened courts, which are required to address a wide range of different legal areas where specialized expertise may be required. In order to assist those judges, who do not have a wide experience with or exposure to refugee law, the FDQ Project has developed a Judges' Checklist. This checklist is designed to allow a judge, who might not receive a great number of refugee cases to recognize, analyse and understand the major components of a decision.<sup>30</sup> The categories of relevant issues are set out in a proposed logical sequence to assist in approaching a case review.

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<sup>29</sup> These statistics have been extracted from UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, Chapter 4.2 (p.24), at: <http://www.unhcr.org/refworld/docid/4e2ee022.html>. "Protection rate" refers to the total number of grants of refugee status and subsidiary protection divided by the number of decisions on the merits. Applications which result in grants of national forms of protection, or are "otherwise closed" have been excluded from the calculation.

<sup>30</sup> As will be obvious, there are many more aspects to an asylum claim that are not captured here, but the Flow Chart is limited to one page on purpose and so choices had to be made.

The Judges' Checklist is annotated with statutory law and case law from national and EU courts. It is also annotated with authoritative position papers from UNHCR which provide further in-depth reading on a variety of protection topics.

In some countries, courts which set aside first instance decisions choose to remit them for reconsideration with clear reasons for their decision, featuring also explanations and annotations relating to the applicable law. This is recommended as a good practice, as it means that the second instance process can serve as a source of learning and guidance for first instance decision-makers.

It is to the judiciary that that an applicant may turn where he or she feels that he or she has been given an incorrect decision. Judges and other second instance decision-makers must understand this as a tremendous responsibility, as lives can hang in the balance.

## 2. The Judges' Checklist

Further explanation of the Judges' Checklist is set out below.

### Capacity

The list suggests a number of key questions that judges could ask as part of the appeal or review process. Among these are: Is the applicant able to participate effectively in the hearing process? In some cases, an applicant is from a vulnerable category (children, abused women, etc.) or mentally incapable of appreciating the nature of the process. Where the facts disclose that the applicant may have specific needs,<sup>31</sup> has the decision-maker made appropriate adjustments to the nature of the proceedings? The pertinent sections of the APD are Article 12(3), first paragraph:

*The personal interview may also be omitted where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. **When in doubt, Member States may require a medical or psychological certificate.** [emphasis added]*

and Article 17(4)(a):

*Member States shall ensure that:*

*(a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, **that interview is conducted by a person who has the necessary knowledge of the special needs of minors;** [emphasis added]*

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<sup>31</sup> See *Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 159(1)h of the Immigration and Refugee Protection Act: Guideline 8 - Guideline on Procedures With Respect to Vulnerable Persons Appearing Before the IRB*, 15 December 2006, No. 8, at: <http://www.unhcr.org/refworld/docid/462e14b72.html>.



# REVIEW OF AN ADMINISTRATIVE PROTECTION DECISION

## A Judges' Checklist

DM = Decision-Maker

ISSUES	QUESTIONS	LEGAL REFERENCE & GUIDANCE	✓
1. Capacity	Is the applicant competent or a vulnerable person in need of changed procedure?	APD Articles 6, 12, 17; UNHCR Handbook Paragraphs 206-219; UNHCR Guidelines: Best Interest of the Child [2008]; Unaccompanied Minors [1997].	
2. Identity	Has the DM identified the applicant?	QD Article 4; APD Article 17; UNHCR Handbook Paragraphs 197; UNHCR Note on Burden and Standard of Proof in Refugee Claims, 1988 (UNHCR Note): Paragraph 10;	
3. Applicant's Claim	1. Has the burden of ascertaining the facts been shared between the applicant and the DM? 2. Have all the facts in the claim been canvassed, and where necessary further explored?	QD Article 4; APD Article: 17; UNHCR Handbook Paragraphs 66,67, 195 - 205; UNHCR Note Paragraph 6;	
4. Credibility Analysis	1. Has the DM identified and applied the correct standard of proof (Balance of Probabilities) for establishing the facts of the applicant's story? 2. Were contradictions, inconsistencies and omissions (including COI) put to the applicant for response? 3. Were there any important, but "unasked", questions about the applicant's story?	QD Article 4 (5); APD Article: 28 (2); F.H. v Sweden, App 32621/06, P 95; Matsiukhina and A. Matsiukhin v. Sweden, Judgement of 21 June 2005, Application no. 31260/04, P 95; N. v. Finland, Judgement of 26 July, 2005, Application no. 38885/02, P 155; UNHCR Handbook: Paragraphs 66,67; UNHCR Note	
5. Well- founded Fear/ Objective Basis	Considering the relevant COI, the individual profile and experiences of the applicant, and the experiences of similarly situated individuals in the country of origin or former habitual residence, is there a reasonable chance that the applicant would experience persecution if returned to the country of nationality or former habitual residence?	QD Articles 2, 5; UNHCR Handbook Paragraphs 37-65;	
6. COI Analysis	1. Is the COI clear, pertinent, authoritative and recent? 2. Was any COI inconsistent with applicant's story put to him or her for comment? 3. If COI is unclear, does the DM state why he or she prefers that COI which supports or does not support the applicant's story?	QD Article 4; APD Article: 8; ECtHR Salah Sheek v. Netherlands, 13 January 2007, App. 1948/04, P. 136; UNHCR Handbook P. 37, 42, 195, 205; UNHCR COI Paper February, 2004, P 23.	
7. Persecution	1. Based upon the facts presented in the claim, has the DM identified all possible instances of past persecution or serious harm and evaluated the risks of future persecution or serious harm? 2. Has the DM considered the role of past persecution? 3. In performing this analysis has the DM considered the situation of family members and other similarly situated persons?	QD Articles 4 (4), 9, 17; UNHCR Handbook Paragraphs 41, 51; Note: P. 19	
8. Refugee Test	Did the DM correctly apply the refugee test – a "reasonable chance" of persecution upon return?	UNHCR Handbook P.42; Interpreting P. 10; Note P 16, 17;	
9. Agent of Persecution	Has the DM identified the agent(s) of persecution?	QD Article 6; ECtHR H.L.R. v. France, Judgment of 29 April 1997, Appl. no. 11/1996/630/813, P. 44; CAT Sadiq Shek Elmi v. Australia, Comm. No. 120/1998 (14 May 1999), P 65; UNHCR Handbook P 65; UNHCR Position Paper on Agents of Persecution , 14 March 1995: P 3; UNHCR, Interpreting Art.1 of the 1951 Convention (Interpreting) P 19;	
10. State Protection	1. If the applicant has suffered past persecution has the DM considered whether the applicant sought state protection; if so what was the result and if not what his or her reasons were? 2. Did the DM consider whether the state would be able to provide protection in the future? 3. Did the DM consider the applicant's personal circumstances when evaluating whether there would be effective protection for him/her if s/ he should return?	QD Articles 7 ECtHR H.L.R. v. France, Judgment of 29 April 1997, Appl. no. 11/1996/630/813; UNHCR Handbook P 98, 100; UNHCR Interpreting P 15; UNHCR Note on International Protection, 7 July 1999; UNHCR Guidelines on International Protection: Internal Flight or Relocation Alternative within the context of Article 1 A(2) of the 1951 Convention (UNHCR IFA Guidelines) July 2004: P 15;	
11. Convention Reason	Has the DM sufficiently analysed all possible nexi that may arise out of the facts of the claim?	QD Articles 9(3), 10 (2); UNHCR Handbook P66-67;	
12. IFA	1. Did the DM identify an area in the home country where the applicant might be safe? 2. Did the DM consider the applicant's personal circumstances when evaluating whether s/he would be safe in the IFA? 3. Did the DM consider the applicant's personal circumstances when evaluating whether it would be reasonable for him/her to relocate and to remain in the IFA.?	QD Articles 4 (3), 8(1) and (2); APD Article: 8(2)(a) ; ECtHR Salah Sheek v. Netherlands, 13 January 2007, App. 1948/04, P. 141; UNHCR Handbook P. 91; UNHCR IFA Guidelines P 2, 4, 6, 9-30, 64, 3; EXCOM Conclusion no. 87 (L) – 1999; EXCOM Note on International Protection, A/AC, 96/7 July 1999: P 17; Interpreting P. 37;	
13. Subsidiary Protection	Did the DM correctly analyse any "real risks" that an applicant might face "serious harm" upon return as those factors are set out in Art. 2 and 15 QD?	See: ICCPR Article 7; CAT P3; ECHR P 3; Charter of Fundamental Rights of the EU P 4; ECJ Case C-465/07	
14. Application of the Law	Did the DM correctly apply the law as set out in national legislation, EU Directives, 1951 Convention and Protocol, and national and international court case law, particularly CJEU and ECtHR?	APD Art. 9	

## Identity

Identifying the applicant (with his or her name and country) is generally critical to establishing the grounds for any application for protection. The pertinent section of the QD is Article 4 on the Assessment of facts and circumstances:

*1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. **In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.***

*2. **The elements referred to in paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, **identity**, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.*** [emphasis added]

## Applicant's Claim

It is the accepted facts in a protection claim which determine whether an applicant is entitled to protection. Gathering *all* the relevant facts is the key function of the first instance interviewer. Article 4 of the QD goes into considerable detail in this regard. Two significant points should be mentioned about Article 4.

The first is that the Article does not oblige asylum authorities to require that an applicant – in order to establish his or her account – provide supporting or corroborating documentation to make out his or her claim. It does, however, permit States to require such supporting documentation if they wish to do so. This is made clear in the first paragraph of Article 4. The final paragraph of that Article applies only to those countries that do require supporting documents from an applicant. Where an applicant is so required, it is possible for the claim to be accepted even where such corroboration is absent. This can occur in some cases where the applicant has taken certain steps to demonstrate his or her protection needs by other means.

Second, Article 4, paragraph 4, provides that past persecution or serious harm creates a presumption (“serious indication”) that the applicant has a well-founded fear of such persecution or serious harm in future. This may provide grounds for the grant of protection.

Article 4 of the QD on the Assessment of facts and circumstances states that:

*1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.*

*2. The elements referred to in paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.*

**3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:**

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- (c) **the individual position and personal circumstances of the applicant**, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

**4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.**

**5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:**

- (a) the applicant has made a genuine effort to substantiate his application;
- (b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
- (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
- (e) **the general credibility of the applicant has been established.** [emphasis added]

## Credibility Analysis

Whereas the test for a risk of persecution focusses on future events, the test for the facts supporting the claim is aimed at past events. Efforts to construct a Common European Asylum System will face serious difficulties if the Member States require different degrees or standards of proof of past facts. On this most central point, the QD is silent. Neither the Court of Justice of the European Union (CJEU) nor the European Court of Human Rights (ECtHR) have directly addressed the question of the requisite standard of proof for use in asylum claim determination in the EU. Consequently, guidance should be sought from international case law and UNHCR.

### Balance of Probability Standard:

This is the standard of probability used by Common Law courts in civil law matters to establish facts. It is also the standard of probability used by Common Law courts to establish the facts in refugee claims; it is also used by UNHCR and some Civil Law courts in refugee claims.

In paragraph 196 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status,<sup>32</sup> UNHCR sets a Balance of Probability standard, and calls for application of the benefit of the doubt in unclear cases:

*196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, **the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.** Indeed, in some cases, it may be for the examiner to use all means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and **there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.** [emphasis added]*

In the UNHCR Note on Burden and Standard of Proof in Refugee Claims,<sup>33</sup> UNHCR adopts the Common Law position:

*Having said this, **and while the common law terms are technical and with a particular relevance for certain countries, these evidentiary standards have been used more broadly in the substantiation of refugee claims anywhere, including by UNHCR.** Therefore the guidelines provided here should be treated as applicable generally to all refugee claims. [emphasis added]*

*Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, **on balance**, capable of being believed.<sup>35</sup> [emphasis added]*

<sup>32</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

<sup>33</sup> UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, available at: <http://www.unhcr.org/refworld/docid/3ae6b3338.html>.

<sup>34</sup> *Ibid.*, paragraph 3.

<sup>35</sup> *Ibid.*, paragraph 11.

In dealing with a credibility analysis, it is not only the use of the appropriate standard that is important. It is also critical to consider whether, where there were apparent contradictions, inconsistencies or omissions, the decision-maker gave an opportunity to the applicant to explain these.

## COI Analysis

The growth of the importance in COI in determining asylum matters has followed the growth of the internet.<sup>36</sup> The FDQ Project has utilized a checklist on COI developed by the International Association for Refugee Law Judges.<sup>37</sup> The EU Directives also refer to the importance of COI.

Reviewing judges must very carefully assess the COI used by the decision-maker in arriving at the conclusion, by use of the checklist. Common problems are failing to cite COI at all, and selective use only of COI that supports a negative determination. Other problems include selecting only parts of a COI report that are negative, and ignoring the counterbalancing portions without providing reasons for why one is preferred over the other. The use of outdated information is also of concern.

The pertinent section of the QD is Article 4(3)(a):

*3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:*

*(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;*

The pertinent section of the APD is Article 8(2)(b):

*2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:*

*[...]*

*(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;*

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<sup>36</sup> Hungarian Helsinki Committee, *Country Information in Asylum Procedures - Quality as a Legal Requirement in the EU*, December 2007, at: <http://www.unhcr.org/refworld/docid/479074032.html>. A follow-up to this study will begin shortly.

<sup>37</sup> See Chapter IV, the COI Checklist.



## Persecution

Persecution must be shown as a basis for a successful claim for refugee status, and serious harm for the grant of subsidiary protection (see below). Persecution can be a single act or cumulative acts as outlined in QD Article 9 on Acts of persecution:

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:
  - (a) be **sufficiently serious by their nature or repetition** as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) be **an accumulation of various measures**, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
2. Acts of persecution as qualified in paragraph 1, can, *inter alia*, take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
  - (c) prosecution or punishment, which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
  - (f) acts of a gender-specific or child-specific nature.
3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1. [emphasis added]

“Refugee Test” in the Judges’ Checklist refers to the standard of proof used when assessing the likelihood of future persecution in refugee cases; it is not a separate test. This standard – although it may be formulated in many possible ways<sup>38</sup> – relates essentially to whether an applicant, if returned to his or her country of origin, would face a reasonable chance of persecution or serious harm upon return.

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<sup>38</sup> *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, United States Supreme Court, 9 March 1987, at: <http://www.unhcr.org/refworld/docid/3ae6b68d10.html>: “reasonable possibility”; *R. v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals (UN High Commissioner for Refugees Intervening)*, [1988] AC 958, [1988] 1 All ER 193, [1988] 2 WLR 92, [1988] Imm AR 147, United Kingdom: House of Lords (Judicial Committee), 16 December 1987, at: <http://www.unhcr.org/refworld/docid/3ae6b67f40.html>: “reasonable degree of likelihood”; *Joseph Adjei v. Minister of Employment and Immigration*, R.S.C. 1976, C. 52, Canada: Federal Court, 27 January 1989, at: <http://www.unhcr.org/refworld/docid/3ae6b6d124.html>: “serious possibility”, “good grounds”, “reasonable chance” and “reasonable possibility”; *Chan Yee Kin v. Minister for Immigration and Ethnic Affairs; Soo Cheng Lee v. Minister for Immigration and Ethnic Affairs; Kelly Kar Chun Chan v. Minister for Immigration and Ethnic Affairs*, Australia: High Court, 12 September 1989, at: <http://www.unhcr.org/refworld/docid/3ae6b70a4.html>: “real chance”.

## Agents of Persecution

An agent of persecution may be (a) the State or (b) a non-State agent where the State is either unable or unwilling to provide effective protection. The pertinent section of the QD is Article 6 on Actors of persecution or serious harm:

*Actors of persecution or serious harm include:*

- (a) the State;*
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;*
- (c) non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.*

## State Protection

Before a claim can be rejected on the grounds that State protection is available, it must be shown that such State protection exists – that is, not only must there be a law addressing the persecutory act, and providing for arrest, prosecution and punishment, but it must be effectively used to remedy the situation – all of which must be readily available to the applicant in practice. The pertinent section of the QD is Article 7, paragraphs 2 and 3:

*2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating **an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.*** [emphasis added]

*3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.*

## Nexus to Convention Reasons (Causal Link)

Probably no area of refugee law is as complicated as ascertaining whether there is a nexus between the acts said to be persecutory and one or more of the five grounds in the Convention. It is not important whether a person actually has the imputed characteristic; what matters is whether he or she is perceived to have that characteristic and is persecuted for it. Case law is replete with analysis of what constitutes such a nexus or a causal link. To address the divergences in interpretation, the QD attempts to bring some clarity. The pertinent section of the QD is Article 10 on Reasons for Persecution:

*1. Member States shall take the following elements into account when assessing the reasons for persecution:*

- (a) the concept of **race** shall in particular include considerations of colour, descent, or membership of a particular ethnic group;*

- (b) the concept of **religion** shall in particular include the holding of theistic, **non-theistic and atheistic beliefs**, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of **nationality** shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a **particular social group** where in particular:
- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
  - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society; depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;
- (e) the concept of **political opinion** shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted **it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.** [emphasis added]

UNHCR's approach to the issue of particular social group, and the protected characteristics of a refugee, is set out in its *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*, 7 May 2002, HCR/GIP/02/02.

UNHCR takes the view that 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" (see UNHCR's *Guidelines on International Protection - "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 (UN document HCR/GIP/02/02, 7 May 2002.). In the EU context, UNHCR calls for States to apply Article 10(2)(d) QD and related national provisions in line with this interpretation. The strict wording of Article 10(2)(d) refers to the need both for protected characteristics and social perceptions. However, EU Member States under the

<sup>39</sup> APD, Article 5.

*acquis* are entitled to afford higher standards of protection than the minimum standards required by the Directives (Article 5 APD). This means that an interpretation that requires only one element or the other - the protected characteristic or the perception - in line with UNHCR's view, is permissible subject to relevant national law.

## Internal Flight or Internal Protection Alternative (IFA)

An analysis of IFA is not required in all countries. Where it does apply, it is often used excessively and without sufficient precision. Careful attention must be paid to whether the decision-maker has identified a specific location where an IFA is said to exist. Without doing so, it may be impossible to evaluate whether that location would be safe and reasonable for that particular applicant. As well, decision-makers should, during the interview or otherwise during the claim assessment process, provide some notice to the applicant that this concept may be applied. This enables the applicant to familiarize him or herself with the suggested IFA and to respond, in case it is not seen as reasonable or safe in his or her case.

It is also important to note that, where an IFA is suggested, it must be shown that the IFA is relevant and reasonable. The decision-maker must therefore demonstrate that the applicant will be able to reach the IFA safely, practically and legally and can reasonably be expected to settle there, live a relatively normal life there free from undue hardships and that he or she is safe, not only against the feared persecution or serious harm - but also from other potential sources of serious harm or persecution that may be new and present there. In other words, the applicant may not be sent to another area of his or her country where he or she could face the same persecution or serious harm - but also must be protected against return to a place where he or she could face a new or different kind of persecution or serious harm.

The pertinent section of the QD is Article 8 on Internal Protection:

*1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.*

*2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.*

*3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.*

## Subsidiary Protection

Subsidiary protection must be considered in any case where a decision-maker has determined that an applicant is not entitled to Convention refugee protection. The pertinent sections of the QD are Article 2:

*(e) "person eligible for subsidiary protection" means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;*

and Article 15 on Serious harm:

*Serious harm consists of:*

- (a) death penalty or execution; or*
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or*
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*

## Application of the Law

In conducting their review, judges should ask: Did the decision-maker correctly apply the laws as set out in national legislation, EU Directives and Regulations, and interpreted in line with national and European caselaw (particularly that of the ECtHR and CJEU) and in the 1951 Convention and 1967 Protocol?

The APD, in Article 9 (2), requires that in all negative decisions “the reasons in fact and in law” must be stated. This is an extremely important area for judicial attention, as many decisions do not reach this standard.



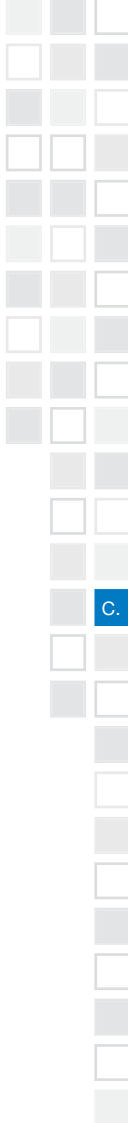
# CONCLUSION

The purpose of this practical Quality Manual is to provide guidance on the various elements involved in establishing and maintaining a high quality asylum system in line with the international and regional obligations of States under the 1951 Convention and the EU asylum Directives.

To be of maximum use a Quality Manual needs to reflect the realities under which a national asylum system operates. While acknowledging the financial constraints facing national asylum systems, managing a national asylum system is not simply a matter of money or continuing what has always been done. The drafters of the Convention were not inspired by financial considerations although the limitations placed upon the definition of a refugee acknowledged that not everyone needing safety from any kind of persecution would be eligible for its protection. The drafters were inspired by a compassion for their fellow human beings who were targeted for reasons over which these people had no control. The 1951 Convention provides the means by which to carry forth that spirit of optimism and compassion.

It is no secret that ideals are easy to follow when times are good; but their value lies in their teachings when times are more demanding. In today's world, asylum faces many challenges, including in the financial and political domains. This Quality Manual aims to contribute to supporting States in fulfilling their responsibilities to breathe continuing life into the words of the 1951 Convention - and the European asylum instruments - and the ideals they continue to uphold.

A trend noticed in the course of the FDQ Project is the tendency in some countries to justify a quality approach to asylum adjudication by means of a financial analysis, which demonstrates that the asylum system is cost-effective. This trend is disturbing not because this is not an accurate and a sensible approach to today's realities, but because it is not the only, or even the best, reason why States would want to improve the quality of asylum adjudication. Creating and maintaining high quality asylum systems is the "right" thing to do. This Quality Manual seeks to contribute, in this very spirit, to advancing a quality approach in which States can take great pride.



C.



# ACKNOWLEDGEMENTS

UNHCR wishes to convey its thanks and acknowledgement to all those who have contributed to the FDQ project and its many events and outputs. This relates particularly to the participating Member State officials, who have devoted their professional knowledge, skills, time and commitment to this important endeavour.

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# ANNEX 1: LIST OF FDQ TOOLS

## CHECKLISTS AND ASSESSMENT FORMS

- A. FDQ Analytical Flow Chart
- B. Building A High Quality Asylum Division Flow Chart
- C. Registration Assessment Form
- D. Interview Assessment Form
- E. Decision Assessment Form
- F. Review of An Administrative Protection Decision – A Judges’ Checklist
- G. Protection File Preparation Checklist
- H. Protection Claim Interview Checklist
- I. Written Protection Decision Checklist – Level I
- J. Written Protection Decision Checklist – Level II: Convention Refugee Analysis
- K. Written Protection Decision Checklist – Level II: Subsidiary Protection Analysis
- L. Written Protection Decision Checklist – Level III: Nexus Analysis
- M. Written Protection Decision Checklist – Level III: Internal Flight Alternative Analysis
- N. Written Protection Decision Checklist – Level III: Exclusion Analysis
- O. Country of Origin Information Judicial Checklist
- P. Standards of probability (credibility assessment) and assessment of future risk (persecution)
- Q. Interpreters’ Evaluation Report

A

# FDQ ANALYTICAL FLOW CHART



ASYLUM-SEEKER



## THE REGISTRATION STAGE

Initial Data Collected  
Medical Screening  
Vulnerable Group Screening  
Information on the Procedure  
Access to UNHCR  
Access to Legal Assistance  
Access to File  
Dublin Procedure



## THE INTERVIEW

Adjudicator Preparation  
Explaining the Procedure  
Setting the Atmosphere  
Quality of Interpretation  
Gathering all the Facts  
Relevancy & Thoroughness of Questions  
Confronting Contradictions (Including COI)  
Role of Counsel  
Recording the Interview



## WRITTEN REASONS

Lead In  
Summary of the applicant's Claim  
Identity  
Determination  
Analysis of Convention Refugee Status  
Analysis of Subsidiary Protection  
Analysis of any other Protection Needs  
Conclusion  
Remedies Available

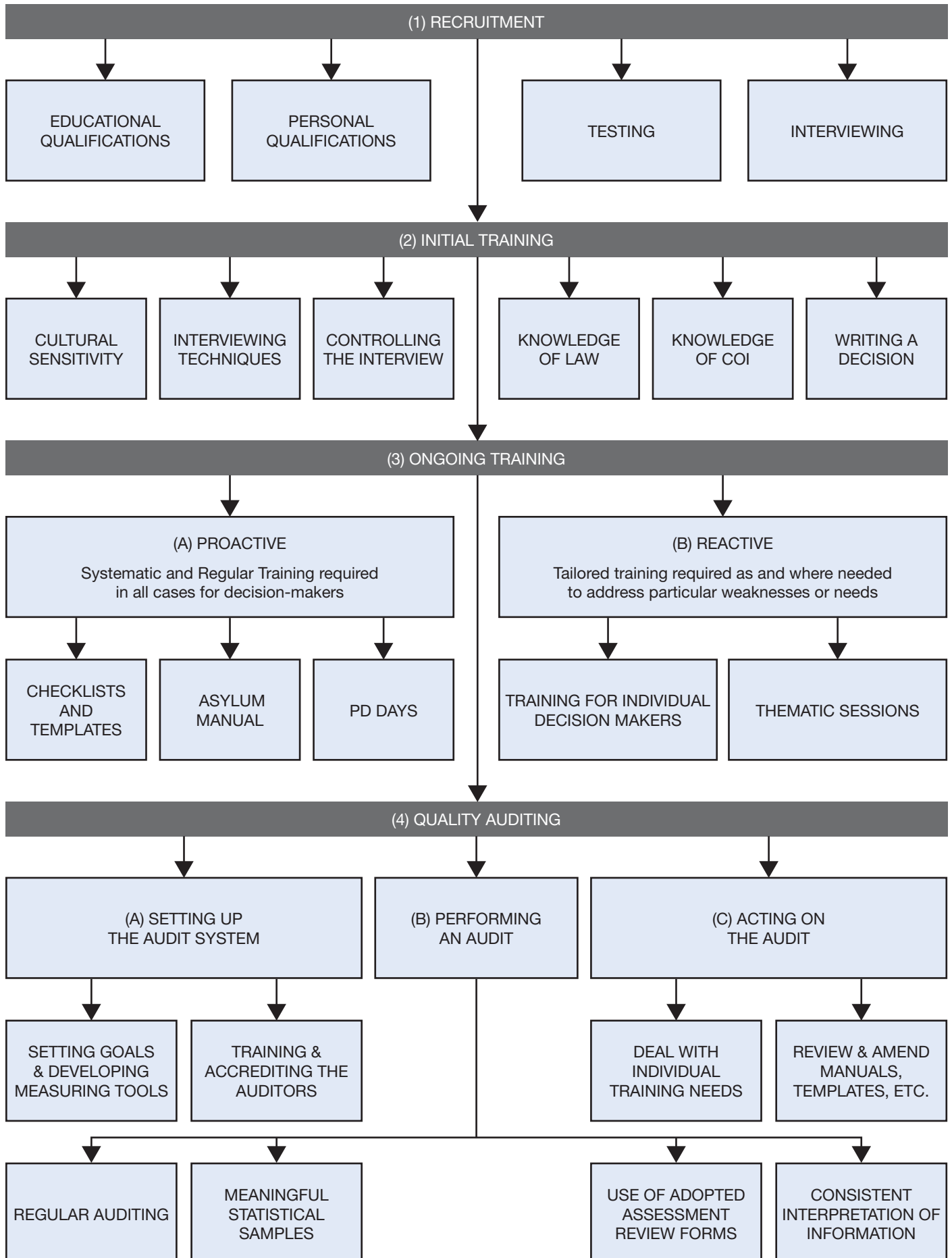


QUALITY ASSURANCE  
UNIT (QAU)



REFERRAL TO COURT

# B BUILDING A HIGH QUALITY ASYLUM DIVISION FLOW CHART



ASSESSOR:		PERSON TO WHOM FEEDBACK PROVIDED:	
OFFICE ASSESSED:		DATE FEEDBACK PROVIDED:	
ASSESSMENT DATE:		INTERPRETER PRESENT:	

## A. Border Procedures

Part A is for use with respect to border guards or any other personnel to whom an applicant is likely to have initial contact

	Location:		
	Date of Visit:		
ASSESSMENT CRITERIA		COMMENTS	✓
1	Do the personnel who are likely to be addressed by the applicant at the border or on the territory of the Member State have instructions for dealing with applicants who wish to make a claim for international protection, including any instruction to forward on the applicants and all relevant information? [APD: Article 6 (5)]		
2	Have the personnel received the necessary training to identify a person potentially in need of or seeking protection, and to proceed further in accordance with those instructions?		
3	What information is available to applicants on how to make a claim for international protection? [APD: Article 10 (1) (a)]		
4	What information is available to applicants on the provision of legal assistance? [APD: Article 15]		
5	What information is available to applicants about his or her right to consult with the UNHCR? [APD: Articles 10 (1) (c), 21]		
6	Is appropriate interpretation available? [APD: Article 10 (1) (b)]		
7	Is there an opportunity to seek oral advice or clarification from the authorities on any of the above-mentioned matters?		

## B. The procedure for making a claim for international protection

Part B is for use with respect to the place where an applicant is referred to make a claim for international protection ("the designated place" – APD Article 6(1))

	Location:		
	Date of Visit:		
MANAGEMENT		COMMENTS	✓
1	Are there measures in place to ensure that all accompanying family members/ dependants are registered?		
2	Are there written procedures to facilitate the making of a claim for international protection?		
3	Do these procedures include clearly defined responsibilities and staff assignments?		
4	Are there oversight mechanisms to ensure that procedures are being followed?		
THE PROVISION OF INFORMATION		COMMENTS	✓
5	Is information made available to the applicant which explains the procedure for making a claim for international protection as well as the various stages of the RSD process including the review/appeal procedures and available assistance for applicants in these procedures? [APD: Articles 10 (1) (a)]		
6	Are there measures in place to ensure that an applicant is aware of the refugee/ subsidiary protection criteria? [APD: Article 10 (1) (a)]		
7	Are there measures in place to ensure that the applicant is aware of the need to produce any necessary supporting documentation? [APD: Article 10 (1) (a) and AQD: Article 4]		

THE PROVISION OF INFORMATION		COMMENTS	✓
8	Are there measures in place to ensure that applicants understand their rights and obligations? [APD: Article 10, 11]		
9	Are there measures in place to ensure that the applicant is aware of any laws and procedures that affect the reception conditions/rights of applicants (i.e. work restrictions/living restrictions)?		
10	Is information available to applicants on their right to seek legal assistance? [APD: Article 15]		
11	Is information available to applicants on their right to consult with the UNHCR? [APD: Article 10 (1) (c)]		
12	Are there measures in place to ensure that each adult is aware of the right to make a separate application for asylum on his or her own behalf? [APD - Art 6 (2)]		
13	Are there measures in place to ensure that dependent adults consent to the making of an application on their behalf? [APD: Art 6 (3)]		
14	Are there any measures in place to ensure that unaccompanied and separated children (UASC) are aware of the RSD process? [APD: Article 10 (1) (a)]		
15	Are there any measures in place to ensure that unaccompanied and separated children have access to legal representatives? [APD: Art 17]		
16	Are there measures in place to ensure that dependants understand derivative status? [APD: Article 10 (1) (a)]		
17	Are there measures in place to advise the applicant of the right to confidentiality? [APD: Article 22]		
18	Are there measures in place to allow the applicant to request that Registration or RSD interviews be conducted by staff and interpreters of a sex preferred by the applicant?		
THE ENVIRONMENT WHERE THE APPLICANT MAKES A CLAIM FOR INTERNATIONAL PROTECTION		COMMENTS	✓
19	Is the area private? <i>Elaborate on any privacy issues including whether the applicant's name or details may be made publicly available</i>		
20	Are appropriate interpreters available, including to support applicants make their application? [APD: Art. 10 (1) (b)]		
21	Are there facilities for dependent children? <i>Comment on whether there are separate and appropriate facilities for children</i>		
22	Is the area appropriate for children making an application in their own right? If not, why not?		
23	Is there any other relevant information?		
THE SCREENING/ROUTING PROCESS		COMMENTS	✓
24	What information is obtained from the applicant that may be used in the RSD interview?		
25	Are there measures in place to identify promptly applicants who may have special protection or assistance needs? (i.e. victims of torture/trafficking victims/gender issues/children)		
26	Are there measures in place to assess the type of protection needs of the applicant and for referring to the appropriate procedure where required? (i.e. accelerated/regular process/STC/trafficking/Dublin Regulation)		

CASE NUMBER:		SPECIFIC NEEDS/ VULNERABLE APPLICANT:	
INTERVIEWER:		LEGAL ASSISTANT/COUNSEL/ GUARDIAN/UNHCR:	
BRANCH OFFICE:		INTERPRETER PRESENT:	
REVIEWER:		LANGUAGE SPOKEN:	
APPLICATION DATE:		SEX OF CLAIMANT:	
INTERVIEW DATE:		SEX OF INTERVIEWER:	
START TIME (ACTUAL):		SEX OF INTERPRETER:	
END TIME:		TYPE OF RECORDING:	
ESTABLISHED NATIONALITY OF CLAIMANT:		FEEDBACK PROVIDED:	

**AS = Asylum-Seeker, IV = Interviewer**

CRITERIA TO BE ASSESSED		ASSESSMENT			COMMENTS
		YES	NO	N/A	
<b>OPENING THE INTERVIEW</b>					
1	Have all attendees been <b>introduced</b> by name, function and tasks at the beginning of the interview?				
2	Was AS asked whether he/she felt physically and psychologically fit for the interview and whether he/she was <b>willing</b> to answer IV's questions? Was AS asked whether he/she understood the interpreter and whether he/she had any objections to the sex or otherwise of the IV or interpreter? Where applicable, if AS showed <b>signs of unfitness</b> , did IV react appropriately? (break, drink, postponement of interview)				
3	Was AS informed about the <b>purpose and objective</b> of the interview? a) to establish the facts of the claim in order to determine whether AS is entitled to protection; b) Sensitive issues may arise during the interview but it will be necessary for AS to recount what has happened as frankly as possible; if a break is needed AS should ask; c) the contents of the interview are to be treated <b>confidentially</b> ; d) no <b>information</b> is to be <b>shared</b> with the authorities of AS' country of origin without his/her express direction and consent; e) the <b>attendees' legal obligation</b> to keep information <b>confidential</b> (IV, typist, interpreter and UNHCR); f) the attendees' <b>rights and obligations</b> (e.g. duty to cooperate, obligation to tell the truth) – and the consequences of a violation; g) he/she should indicate any <b>communication and comprehension</b> difficulties; h) the possibility to be supported by <b>counsellor or a legal adviser</b> ; i) the <b>rights of the legal representative</b> , where applicable,.				

CRITERIA TO BE ASSESSED		ASSESSMENT			COMMENTS
		YES	NO	N/A	
<b>THE KIND OF QUESTIONING</b>					
4	<p>Was an <b>open atmosphere of trust</b> (correct, objective, factual and fair) established and maintained during the interview?</p> <p>a) Was there a <b>warm-up</b> phase?</p> <p>b) Continuous <b>eye contact</b> (unless culturally inappropriate);</p> <p>c) Addressing AS <b>directly</b> (not via the interpreter);</p> <p>d) Appropriate <b>body language</b>;</p> <p>e) Offering <b>breaks</b> (when necessary and at interviews lasting more than 2 hours);</p> <p>f) Appropriate and correct speaking tone.</p>				
5	<p>Was it apparent that <b>IV had conducted relevant research</b> for the interview by consulting:</p> <p>a) <b>Evidence</b> submitted by AS prior to the interview such as statements made at the entry point or initial screening of supporting documents provided,</p> <p>b) relevant <b>COI</b>?</p>				
6	Was IV considerate of <b>AS' condition</b> (e.g. strong affects like fear, trauma, aggression or fatigue) and did he/she react appropriately and with the necessary sensitivity?				
7	Was IV considerate of <b>AS' cultural or gender background</b> (e.g. cultural and social status of women, etc.) or special needs?				
8	Was AS given <b>enough time</b> to tell his/her story as <b>freely</b> as possible?				
9	Did IV keep his/her questions <b>short and easy</b> , adjusted to AS' education level, and did he/she ask only one question at a time?				
10	Were <b>open questions</b> asked to start with a topic, and <b>closed questions</b> to specify?				
11	Were used <b>legal terms</b> sufficiently explained?				
12	Did IV do a proper <b>follow-up</b> on all relevant issues raised by AS by posing subsequent questions?				
13	Was AS asked questions checking the <b>credibility</b> of his/her statements only after he/she could <b>freely talk</b> about his/her reasons for flight?				
14	Were neutral questions without judging asked to clear up <b>inconsistencies [external or internal]</b> ?				
15	Where applicable, was IV considerate of problems regarding AS' <b>credibility</b> , arising from questioning <b>women</b> on their <b>male family members'</b> statements? [ <i>UNHCR, Interviewing Applicants for Refugee Status, p.23: "In certain cultures men do not share the details of their professional, political, military or social activities with their female family members."</i> ]				
16	Did IV avoid any <b>critical or judgemental attitude</b> (verbal and non-verbal)?				
<b>ESTABLISHING THE SUBSTANCE OF THE CLAIM</b>					
17	Were all the <b>key elements</b> (who, what, why, when and where) of the basis of claim clearly established? (At the end of the interview, no questions remain that could have been asked, or if asked, clarified.)				
18	Did IV's enquiries <b>cover all relevant declarations</b> brought forward by AS?				
19	Was AS asked about his/her fear of persecution or serious harm <b>upon return</b> to his/her country of origin?				
20	Was AS' <b>Convention reason(s)</b> /lack of Convention reason(s) examined?				





	CRITERIA TO BE ASSESSED	ASSESSMENT			COMMENTS
		YES	NO	N/A	
21	Were AS' <b>Subsidiary Protection grounds (or lack of)</b> examined?				
22	Where applicable, did IV establish whether AS had already sought <b>protection in his/her home country?</b>				
23	Where applicable, did the IV establish whether or not <b>internal relocation</b> was relevant and reasonable?				
24	Where applicable, was any <b>adverse COI evidence</b> put to the applicant and was he/she given the opportunity to respond?				
<b>CONTROLLING THE INTERPRETER</b>					
25	Did IV sufficiently <b>verify the understanding</b> between the interpreter and AS?				
26	Was the interpreter <b>sufficiently fluent</b> in the language of the host country?				
27	Where applicable: Did the interpreter stop the speakers in situations where it was <b>impossible to translate?</b> If not, did the IV do so?				
28	Did the interpreter avoid <b>changing or summarizing</b> the content or the meaning of what had been said or changing the level of language?				
29	Where there was reason to believe that not all of what the claimant had stated was interpreted, or in cases of unclear translation, did IV seek <b>clarification</b> from the interpreter?				
30	Did the interpreter avoid <b>commenting</b> upon the evidence and, instead, stick to strict interpretation?				
31	Did IV avoid misusing the interpreter as an <b>expert for COI, culture, etc.?</b>				
32	Where applicable, did IV provide any <b>feedback</b> to the interpreter with a view to improve the latter's interpretation services in the future?				
<b>RIGHTS OF THE PARTIES</b>					
33	Did IV accurately <b>summarize</b> AS' statements / main reasons for flight and did he give AS the opportunity to exercise his/her <b>right to be heard</b> and to comment?				
34	Was AS given the opportunity to exercise his/her <b>right to be heard</b> and to comment on the (provisional) results of the gathering of evidence?				
35	Was AS' legal <b>advisor/representative</b> given the opportunity to exercise his/her rights (questions, comments, applications, etc.)?				
<b>CLOSING THE INTERVIEW</b>					
36	Was the interview <b>recorded</b> in compliance with the <b>EU</b> Procedures Directive and does the written report contain all essential information as stipulated in Art. 4 (2) EU Qualification Directive?				
37	Did the interpreter <b>retranslate</b> the complete written report to AS, and was the AS given the opportunity to <b>amend or correct</b> the transcript and provided with a copy of it?				
38	Was AS given the opportunity to ask <b>additional questions?</b>				
39	If the AS was requested to produce <b>further evidence</b> was he/she granted an appropriate <b>time-limit</b> within which to do so?				
40	Did IV advise AS at the end of the interview of the <b>next procedural steps?</b>				

CASE NUMBER:		ESTABLISHED NATIONALITY OF CLAIMANT:	
DECISION-MAKER:		NATURE OF DETERMINATION:	
APPLICATION DATE:		REVIEWER:	
INTERVIEW DATE:		ASSESSMENT DATE:	
DECISION DATE:		FEEDBACK PROVIDED:	

CRITERIA TO BE ASSESSED	ASSESSMENT	COMMENTS			
		YES	NO	N/A	
<b>INTRODUCTORY INFORMATION</b>					
1	Does the decision state the correct name, date of birth, nationality/country of origin, and Asylum Service reference number?				
2	Does the decision contain information as regards review and appeal rights? [APD: Article 9(2); See also APD: Article 39]				
<b>BASIS OF CLAIM</b>					
3	Does the decision state the basis upon which the claim is made or as disclosed by an examination of the facts?				
4	Does the decision clearly set out all of the core/material facts of the claim, including who, what, why, when, where?				
5	Does the decision correctly identify the persecution/ill-treatment claimed by the applicant?				
6	Is the decision forward looking? Does the decision correctly identify in relation to any future persecution/ill-treatment feared on return the “who, what, why, where” elements?				
<b>DETERMINATION</b>					
7	Does the decision provide a short statement of the determination?				
<b>LEGAL ANALYSIS</b>					
8	Does the decision give due consideration to all core/material facts of the claim?				
9	Does the decision state clearly and give sound reasons as to which core/material facts of the claim are accepted and why, or, if not, why not?				
10	In relation to the credibility assessment, does the decision-maker appropriately use objective information (precise and up to date) such as COI? [APD: Article 8 (2) (b) ]				
11	Has the correct burden of proof been applied? [QD: Article 4]				
12	Has the correct standard of proof been applied?				

CRITERIA TO BE ASSESSED		ASSESSMENT			COMMENTS
		YES	NO	N/A	
<b>REFUGEE CONVENTION ANALYSIS</b>					
<b>a. Past Persecution</b>					
13	Does the decision-maker reach an objectively reasoned conclusion as to whether the applicant has been in the past subject to persecution or to direct threats of persecution? [QD: Article 4 (4)]				
14	Has the decision-maker correctly identified the agent(s) of persecution? [QD: Article 6]				
<b>b. Future Fear</b>					
15	Does the decision-maker reach an objectively reasoned conclusion as to whether the applicant has a well-founded fear of persecution on return? [QD: Article 4 (4)]				
16	Does the decision-maker apply the correct standard of proof? A well-founded fear of persecution must be proved to be 'reasonably possible' [UNHCR (2001) Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees, para 10]				
<b>c. State Protection</b>					
17	Does the decision-maker objectively reason whether state protection is available? [QD: Article 7]				
18	Has the decision-maker taken into account the applicant's personal circumstances when evaluating whether there would be effective state protection for him/her if s/he should return?				
<b>d. Convention Reason</b>					
19	Does the decision correctly and thoroughly assess whether a Convention reason(s) applies in the case (either as explicitly stated by the applicant or as identified by the decision-maker). [QD: Article 10]				
<b>e. IFA (Internal Flight Alternative)</b>					
20	If an IFA is relevant (safe, reasonable, and practical), does the decision-maker objectively reason whether an internal flight alternative is available? [QD: Article 8]				
21	If an IFA has been proposed by the decision maker, did the decision-maker examine the applicant's personal circumstances when evaluating whether it would be safe and reasonable for the applicant to relocate?				
<b>SUBSIDIARY PROTECTION ANALYSIS</b>					
22	Does the decision-maker objectively reason whether the applicant would be, upon return to his/her country of origin, at risk of facing the death penalty or execution? [QD: Article 15 (a)]				
23	Does the decision-maker objectively reason whether the applicant would be, upon return to his/her country of origin, at risk of torture or inhuman or degrading treatment or punishment? [QD: Article 15 (b)]				
24	Does the decision-maker objectively reason whether the applicant would be, upon return to his/her country of origin, at risk of a serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict? [QD: Article 15 (c)]				
25	Does the decision-maker objectively reason whether state protection is available?				
26	Where an IFA is relevant has the decision-maker properly analysed it as per Q.20 and Q.21?				
<b>HUMANITARIAN PROTECTION</b>					
27	Has the decision-maker identified and assessed any national humanitarian grounds that may be relevant?				
<b>OTHER COMMENTS OR OBSERVATIONS</b>					



# REVIEW OF AN ADMINISTRATIVE PROTECTION DECISION

## A Judges' Checklist

DM = Decision-Maker

ISSUES	QUESTIONS	LEGAL REFERENCE & GUIDANCE	✓
1. Capacity	Is the applicant competent or a vulnerable person in need of changed procedure?	APD Articles 6, 12, 17; UNHCR Handbook Paragraphs 206-219; UNHCR Guidelines: Best Interest of the Child [2008]; Unaccompanied Minors [1997].	
2. Identity	Has the DM identified the applicant?	QD Article 4; APD Article 17; UNHCR Handbook Paragraphs 197; UNHCR Note on Burden and Standard of Proof in Refugee Claims, 1988 (UNHCR Note): Paragraph 10;	
3. Applicant's Claim	1. Has the burden of ascertaining the facts been shared between the applicant and the DM? 2. Have all the facts in the claim been canvassed, and where necessary further explored?	QD Article 4; APD Article: 17; UNHCR Handbook Paragraphs 66,67, 195 - 205; UNHCR Note Paragraph 6;	
4. Credibility Analysis	1. Has the DM identified and applied the correct standard of proof (Balance of Probabilities) for establishing the facts of the applicant's story? 2. Were contradictions, inconsistencies and omissions (including COI) put to the applicant for response? 3. Were there any important, but "unasked", questions about the applicant's story?	QD Article 4 (5); APD Article: 28 (2); F.H. v Sweden, App 32621/06, P 95; Matsiukhina and A. Matsiukhin v. Sweden, Judgement of 21 June 2005, Application no. 31260/04, P 95; N. v. Finland, Judgement of 26 July, 2005, Application no. 38885/02, P 155; UNHCR Handbook: Paragraphs 66,67; UNHCR Note	
5. Well- founded Fear/ Objective Basis	Considering the relevant COI, the individual profile and experiences of the applicant, and the experiences of similarly situated individuals in the country of origin or former habitual residence, is there a reasonable chance that the applicant would experience persecution if returned to the country of nationality or former habitual residence?	QD Articles 2, 5; UNHCR Handbook Paragraphs 37-65;	
6. COI Analysis	1. Is the COI clear, pertinent, authoritative and recent? 2. Was any COI inconsistent with applicant's story put to him or her for comment? 3. If COI is unclear, does the DM state why he or she prefers that COI which supports or does not support the applicant's story?	QD Article 4; APD Article: 8; ECtHR Salah Sheek v. Netherlands, 13 January 2007, App. 1948/04, P. 136; UNHCR Handbook P. 37,42,195,205; UNHCR COI Paper February, 2004, P 23.	
7. Persecution	1. Based upon the facts presented in the claim, has the DM identified all possible instances of past persecution or serious harm and evaluated the risks of future persecution or serious harm? 2. Has the DM considered the role of past persecution? 3. In performing this analysis has the DM considered the situation of family members and other similarly situated persons?	QD Articles 4 (4), 9, 17; UNHCR Handbook Paragraphs 41, 51; Note: P. 19	
8. Refugee Test	Did the DM correctly apply the refugee test – a "reasonable chance" of persecution upon return?	UNHCR Handbook P.42; Interpreting P. 10; Note P 16, 17;	
9. Agent of Persecution	Has the DM identified the agent(s) of persecution?	QD Article 6; ECtHR H.L.R. v. France, Judgment of 29 April 1997, Appl. no. 11/1996/630/813, P. 44; CAT Sadiq Shek Elmi v. Australia, Comm. No. 120/1998 (14 May 1999), P 65; UNHCR Handbook P 65; UNHCR Position Paper on Agents of Persecution , 14 March 1995: P 3; UNHCR, Interpreting Art.1 of the 1951 Convention (Interpreting) P 19;	
10. State Protection	1. If the applicant has suffered past persecution has the DM considered whether the applicant sought state protection; if so what was the result and if not what his or her reasons were? 2. Did the DM consider whether the state would be able to provide protection in the future? 3. Did the DM consider the applicant's personal circumstances when evaluating whether there would be effective protection for him/her if s/ he should return?	QD Articles 7 ECtHR H.L.R. v. France, Judgment of 29 April 1997, Appl. no. 11/1996/630/813; UNHCR Handbook P 98, 100; UNHCR Interpreting P 15; UNHCR Note on International Protection, 7 July 1999; UNHCR Guidelines on International Protection: Internal Flight or Relocation Alternative within the context of Article 1 A(2) of the 1951 Convention (UNHCR IFA Guidelines) July 2004: P 15;	
11. Convention Reason	Has the DM sufficiently analysed all possible nexi that may arise out of the facts of the claim?	QD Articles 9(3), 10 (2); UNHCR Handbook P66-67;	
12. IFA	1. Did the DM identify an area in the home country where the applicant might be safe? 2. Did the DM consider the applicant's personal circumstances when evaluating whether s/he would be safe in the IFA? 3. Did the DM consider the applicant's personal circumstances when evaluating whether it would be reasonable for him/her to relocate and to remain in the IFA.?	QD Articles 4 (3), 8(1) and (2); APD Article: 8(2)(a) ; ECtHR Salah Sheek v. Netherlands, 13 January 2007, App. 1948/04, P. 141; UNHCR Handbook P. 91; UNHCR IFA Guidelines P 2, 4, 6, 9-30, 64, 3; EXCOM Conclusion no. 87 (L) – 1999; EXCOM Note on International Protection, A/AC, 96/7 July 1999: P 17; Interpreting P. 37;	
13. Subsidiary Protection	Did the DM correctly analyse any "real risks" that an applicant might face "serious harm" upon return as those factors are set out in Art. 2 and 15 QD?	See: ICCPR Article 7; CAT P3; ECHR P 3; Charter of Fundamental Rights of the EU P 4; ECJ Case C-465/07	
14. Application of the Law	Did the DM correctly apply the law as set out in national legislation, EU Directives, 1951 Convention and Protocol, and national and international court case law, particularly CJEU and ECtHR?	APD Art. 9	



# PROTECTION FILE PREPARATION CHECKLIST

ISSUES	ISSUE DETAILS	REFERENCES	INTERVIEWER FILE NOTES/QUESTIONS	✓
Capacity	Mental Competency, Under-aged Minor, victim of PTSD, etc.	APD: Articles 6, 12, 17 UNHCR Handbook: Paragraphs 206 – 219 UNHCR Guidelines: Best Interests of the Child [2008], Unaccompanied Minors [1997]		
Identity	Name and Country of nationality or former habitual residence	APD: Articles 11, 23 QD: Article 4 UNHCR Handbook: Paragraph 197 UNHCR Note: Paragraph 10		
Applicant's Claim	<p><b>Identify</b></p> <ul style="list-style-type: none"> <li>The material facts and any special factors about the applicant or his/her family background.</li> <li>What and who the applicant fears.</li> <li>Whether the COI discloses other potential risks to the applicant or to similarly situated persons.</li> </ul>	QD: Article 4 UNHCR Handbook: Paragraphs 66, 67, 196 UNHCR Note: Paragraph 6		
Credibility Issues	Is there <i>internal</i> consistency in the Applicant's oral, written & documentary evidence?	QD: Article 4 UNHCR Handbook: Paragraph 199 UNHCR Note		
	Is the applicant's evidence externally consistent with statements of witnesses or family members and with COI?			
	If there is delay, what reasons are given for: (i) delay in departure; (ii) not claiming elsewhere; (iii) not claiming earlier?			
Persecution	Who is the agent of persecution?	QD: Articles 4, 6, 9 UNHCR Handbook: Paragraphs 45, 51 – 60 UNHCR Note: Paragraph 19		
	What is the nature of the feared persecution?			
State Protection	If the applicant claims past persecution has he or she sought state protection? If not, what are the reasons for not doing so?	QD: Article 4, 7 UNHCR Handbook: Paragraphs 97 – 100 UNHCR Note on International Protection [1999]		
	Does the COI indicate that the State might be unwilling or unable to protect this applicant or similarly situated individuals?			
Reasons for Persecution [Nexus]	Race	QD: Articles 9, 10 UNHCR Handbook: Paragraphs 66 – 86 UNHCR Guidelines on Membership of a Particular Social Group UNHCR Guidelines on Religion based Persecution UNHCR Gender Guidelines		
	Nationality			
	Religion			
	Membership of a Particular Social Group			
Internal Protection [Internal Flight Alternative] [Re-location Alternative]	Political Opinion	QD: Article 8 UNHCR Handbook: Paragraph 91 UNHCR Guidelines on IFA		
	Relevant			
	Identify a proposed relocation area			
	Legally and safely accessible			
Subsidiary Protection	Reasonable to settle and remain	QD: Articles 2, 15 UNHCR Statement on Article 15 (c) of the QD		
	Article 15 (a)			
	Article 15 (b)			
Exclusion	Article 15 (c)	QD: Article 12 UNHCR Handbook: 140 – 163 UNHCR Guidelines on Exclusion		
	Exclusion: Article 1E			
	Exclusion: Article 1F			



# PROTECTION CLAIM INTERVIEW CHECKLIST

ISSUES	SPECIFIC QUESTIONS	INTERVIEWER NOTES	✓
<b>GATHER THE FACTS</b> <i>Gather all the relevant evidence before proceeding to an analysis of potential status</i>	Has there been past persecution or serious harm?		
	Are there any personal characteristics of the applicant that might affect his or her susceptibility to persecution or serious harm or ability to seek state protection or relocate to an IFA?		
	What is the situation for similarly situated persons?		
	Is there any basis for Exclusion?		
<b>CHECK THE CREDIBILITY</b> <i>Are there any issues which cast doubt on the credibility of the applicant's claim? If so, has he or she been given the opportunity to explain them?</i>	Are there any contradictions, inconsistencies or omissions in the applicant's oral evidence which are central to the claim?		
	Are the applicant's documents consistent with his or her claim?		
	If there is any evidence from family members or witnesses is it consistent with the applicant's claim?		
	Is the COI consistent with the applicant's claim?		
	Has the applicant given reasonable explanations for any apparent contradictions, inconsistencies or omissions?		
<b>PERSECUTION</b> <i>What problems has the applicant faced or fears facing if he or she returns to his or her country?</i>	What is the nature of the feared persecution?		
	From whom does the applicant fear persecution?		
	Is the persecution feared cumulative?		
<b>STATE PROTECTION</b> <i>Can the applicant get state Protection?</i>	If the applicant was persecuted in the past did he or she go to his or her state for help?		
	If the applicant was persecuted in the past and did not seek state protection why not?		
	If the applicant were to go to his or her state for protection does he or she think the state could provide protection?		
<b>CONVENTION REASONS [NEXUS]</b> <i>For what reason does the applicant fear he or she will be persecuted?</i>	Race		
	Religion		
	Nationality		
	Member of a Particular Social Group		
	Political Opinion		
<b>IFA</b> <i>Can the applicant safely relocate somewhere in his or her country?</i>	Where a DM has identified a specific IFA as relevant can the applicant get to it safely and legally?		
	If an IFA is relevant can the applicant live there safely?		
	If an IFA is relevant can the applicant live there reasonably?		
<b>SUBSIDIARY PROTECTION</b> <i>QD; Article 15</i>	Does the applicant face a "real risk" of "serious harm" due to the death penalty or execution?		
	Does the applicant face a "real risk" of "serious harm" due to torture or inhuman or degrading treatment or punishment?		
	Does the applicant face a "real risk" of "serious harm" due to serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict?		



# WRITTEN PROTECTION DECISION CHECKLIST

Level I

## GENERAL INSTRUCTIONS

The basic rule in protection analysis is that the Decision-Maker (DM) first analyses whether an applicant is entitled to Convention Refugee [CR] status and if he or she is not so entitled, then the analysis moves on to whether the applicant qualifies for Subsidiary Protection [SP]. [Note Article 2 (e) of the EU Qualification Directive requires that an assessment of Subsidiary Protection not be made until after the evaluation of CR status.] In some countries, where there is a further discretionary protection offered by the state, the DM may be required to analyse that as well if no CR or SP status is established.

This **checklist** sets out a suggested format to follow when writing a Protection Decision. For a detailed analysis of CR status please use **Written Protection Decision Checklist: Convention Refugee Analysis**; for a detailed analysis of SP status please use **Written Protection Decision Checklist: Subsidiary Protection**.

In some countries it may not be possible to follow the outline provided below for various reasons. This is a “generic” checklist aimed at providing a suggested approach. Countries may wish to adapt it to their particular circumstances.

ISSUES	SPECIFIC QUESTIONS	✓
<b>Required Preliminary Information</b>	Different states have different requirements as to what <b>must</b> be put in a Protection Decision. Where that is the case, and where appropriate, the best place to put this is at the outset.	
<b>Lead In</b>	The ‘Lead In’ is a short statement which identifies the applicant and the basis of the claim – such as: <i>“The applicant states that he is a 35 year old national of xxxxx who claims protection on the basis of his political opinion.”</i> The purpose is to state the basis of the claim and to allow the reader to know at the outset the general nature of the claim.	
<b>Summary of the Claim</b>	<b>The examination of the particular aspects of each claim must be thorough.</b> This section contains the applicant’s account of why he or she is seeking protection. It should contain any relevant written information provided prior to the interview as well as his or her testimony or that of other family members or witnesses. Supporting documents provided by the applicant may also be listed. Enough information should be provided so that a reader unfamiliar with the claim would be able to understand why Protection is being sought. Only facts which are central to the basis of the claim should be included. <b>This is not the section where an evaluation of the claim will be made.</b>	
<b>Identity</b>	A short statement of whether the applicant’s identity (name and country of origin) is accepted and why or why not.	
<b>Determination</b>	A short statement of the decision which should address the possible protection grounds (Convention status, Subsidiary Protection status and any Temporary Protection status). For example: <i>“The Refugee Authority has concluded that the applicant is (or is not) eligible for Convention Refugee Protection or Subsidiary Protection for the reasons which follow.”</i>	
<b>Analysis of CR Status</b> <i>[For a detailed CR analysis see: Written Protection Decision Checklist: Convention Refugee Analysis]</i>	In this section a DM will analyse the material facts of this claim, the relevant Country of Origin Information [COI], the applicable law and then draw a conclusion as to whether the applicant qualifies for CR Protection. In order to qualify for CR status an applicant must establish that he or she has a well-founded fear of persecution. This involves establishing the various elements of the refugee definition. (i) The material facts of the applicant’s claim must be credible [ <b>Credibility</b> ]; (ii) there must be a “reasonable possibility” that should the applicant be returned to the country of nationality or former habitual residence he or she would suffer harm [ <b>Objective Basis</b> ]; (iii) the authorities in the applicant’s country must be either “unable” or “unwilling” to protect him or her [ <b>Protection</b> ]; (iv) the harm must constitute “persecution” [ <b>Persecution</b> ]; (v) the “persecution” feared must be “for reason of” one of the five grounds listed in the Refugee definition [ <b>Nexus or Convention Ground</b> ]; and (vi), in countries which apply the Internal Flight Alternative [IFA], it must not be possible for the applicant to live “safely” and “reasonably” in any part of the country [IFA]. If any of these elements is missing then the definition of a Convention Refugee has not been met and the DM must move on to a consideration of whether SP applies.	
<b>Analysis of SP Status.</b> <i>[For detailed analysis of SP see: Written Protection Decision Checklist: Subsidiary Protection.]</i>	If the applicant is not eligible for Convention Refugee status he or she may still be eligible for Subsidiary Protection. The DM will need to analyse three issues in this section. Does the applicant face “a real risk of suffering serious harm” upon return to his or her country of origin for reasons relating to the (i) “death penalty or execution”; (ii) “torture or inhuman or degrading treatment or punishment... in the country of origin”; (iii) “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”. In this section the DM may find conclusions reached under the CR analysis with respect to credibility, protection, or IFA relevant here as well. [The quotes are from the EU Qualification Directive, Articles 2 and 15.]	
<b>Exclusion</b>	Where the facts warrant it, the DM must analyse whether the applicant is excluded from CR or SP protection.	
<b>Legal Remedies</b>	Where a protection status is denied, specify available legal remedies. This is a requirement of Article 9 (2) of the EU Asylum Procedures Directive.	

GENERAL INSTRUCTIONS

In this section a DM will analyse the material facts of this claim, the relevant Country of Origin Information [COI], the applicable law and then draw a conclusion as to whether the applicant qualifies for CR Protection. In order to qualify for CR status an applicant “must establish, in cooperation with the authorities” that he or she has a well-founded fear of persecution. This involves establishing the various elements of the refugee definition. (i) The material facts of the Applicant’s claim must be credible [**Credibility**]; (ii) there must be a “reasonable possibility” that should the Applicant be returned to the country of nationality or former habitual residence he or she would suffer harm [**Objective Basis**]; (iii) the authorities in the Applicant’s country must be either “unable” or “unwilling” to protect him or her [**Protection**]; (iv) the harm must constitute ‘persecution’ [**Persecution**]; (v) the ‘persecution’ feared must be “for reason of” one of the five grounds listed in the Refugee definition [**Nexus or Convention Ground**]; and (vi), in countries which apply the Internal Flight Alternative [IFA], it must not be possible for the Applicant to live “safely” and “reasonably” in any part of the country [**IFA**]. If any of these elements is missing then the definition of a Convention Refugee has not been met and the DM must move on to a consideration of whether SP applies. [Where the facts warrant it, the DM must analyse whether the Applicant is excluded from protection.]

The suggested analysis below leads the DM through the elements of the Refugee definition in a principled and logical way. The references in the boxes to the left are to the governing European law [The EU Qualification Directive (QD) or the EU Asylum Procedures Directive (APD)] in all countries of the EU irrespective of whether these provisions have been incorporated into national law. However, the EU Directives set out minimum standards for the protection of Applicants for international protection pursuant to the Refugee Convention or Subsidiary Protection. Article 5 of the EU Asylum Procedures Directive provides that “Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.” Note as well that the UNHCR has published interpretative Guidelines on both Membership of a Particular Social Group and Religion-based Persecution. The UNHCR has also provided observations through its Excom publication: Thematic Compilation of Excom Conclusions. For information on international case law relevant to the Refugee Convention the UNHCR has published: Compilation of Case Law on the Refugee Convention. All of these are available on its website.

ISSUES	SPECIFIC QUESTIONS	✓
<p><b>STEP 1</b> Summary of the Claim QD: Article 4</p>	<p><b>SUMMARY OF THE CLAIM:</b> is the responsibility of the DM to determine if, on the basis of the facts in the asylum claim, the applicant is entitled to Convention Refugee protection. The DM must work jointly with the applicant to establish the facts of the claim and analyse each case on the basis of those individual facts. If the applicant has been subject to persecution in the past that “...is a serious indication of the applicant’s well founded fear of persecution” for the future “...unless there are good reasons to consider that such persecution or harm will not be repeated.” The clearest way to obtain the necessary facts is to ask the applicant what has happened to him or her in his or her country and what does he or she fear if returned to his or her country. Do not ask whether he or she has been persecuted, or fears being persecuted, for one of the five CR grounds as he or she might not know what these grounds mean in law, nor the legal meaning of “persecution”. It is better to simply ask: “What problems have you faced or do you fear facing if you return to your country?”</p>	
<p><b>STEP 2</b> Credibility QD: Article 4</p>	<p><b>CREDIBILITY:</b> Evaluate the credibility of the information provided by the applicant regarding the <b>material elements</b> of the claim with reference to the relevant credibility indicators and taking into account the <b>reasonableness of any explanations</b> provided by the applicant for apparent credibility problems [Emphasis added]. When evaluating the credibility keep in mind the following five credibility indicators: (i) Sufficiency of detail and specificity; (ii) Internal consistency of oral and written information provided by the applicant including documents; (iii) Consistency of applicant’s statements with information provided by family members/witnesses; (iv) Consistency with COI; (v) Plausibility. Assessing credibility is one of the most difficult aspects of decision making. It involves both the Burden and the Standard of Proof. A “Burden” of proof refers to <b>who</b> must prove something whereas a “Standard” of proof refers to the extent to which something must be proved. While Article 4 of the QD notes that the “Burden” of substantiating a claim is a shared one between the applicant and the DM, it does not articulate a “Standard” of proof beyond “substantiating”. In paragraph 11 of its <b>Note on the Burden and Standard of Proof in Refugee Claims</b> issued December 16, 1998 the UNHCR states that... “Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.” [Emphasis added]</p>	
<p><b>STEP 3</b> Well-Founded Fear Assessment</p>	<p><b>WELL-FOUNDED FEAR ASSESSMENT:</b> In this step the DM will analyse whether the claim of the applicant meets the requirements of the refugee definition. This involves determining whether the fears expressed are objectively grounded, whether the state is able and willing to offer effective protection, whether the feared harm would constitute persecution, whether that persecution is for reasons of one or more of the five Convention grounds.</p>	
<p><b>STEP 3a</b> Objective BASIS</p>	<p><b>OBJECTIVE BASIS:</b> Considering the relevant COI, the individual profile and experiences of the Applicant, and the experience of similarly situated individuals in the country of origin, is there a reasonable possibility that the Applicant would experience harm if returned to the country of nationality or habitual residence? The DM should base his/her assessment on the facts hs/she has accepted relating to the applicant’s profile and experiences and with reference to the relevant COI.</p>	



<p>STEP 3b State Protection QD: Article 7</p>	<p><b>PROTECTION:</b> can be provided by (i) the state; or (ii) parties or organisations controlling either the state or a substantial portion of it. Some countries require only that the state provide protection.</p> <p>Protection is <b>generally</b> provided where the parties in (i) and (ii) above take “reasonable steps” to prevent the persecution by, <b>among other things</b>, operating an “effective” legal system for (i) the “detection”, (ii) “prosecution”; and “punishment” of crimes and the applicant has “access” to that protection system.</p>	
<p>STEP 3c Persecution QD: Articles 6, 9</p>	<p><b>ACTS OF PERSECUTION:</b> must be “...sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights”. They can involve acts of physical, mental or sexual violence; involve legal, administrative, police or judicial measures; prosecution or punishment; denial of judicial redress; military service; or acts of a gender-specific or child-specific nature.</p> <p><b>AGENTS OF PERSECUTION:</b> can be carried out by (i) the state; (ii) parties or organisations controlling either the state or a substantial portion of it; or (iii) by non-state actors where the parties mentioned in (i) and (ii) are either unwilling or unable to provide protection.</p>	
<p>STEP 3d Nexus / Causal Link QD: Article 10</p>	<p><b>GROUND OF PERSECUTION:</b> There are five grounds upon which a CR claim may be grounded. (i) race; (ii) religion; (iii) nationality; (iv) membership of a particular social group; and (v) political opinion. Remember that the definition states that persecution may “...be for reasons of...” In other words, what matters is what is in the eye of the persecutor. Even if an Applicant is being persecuted for a political opinion he or she does not have, he or she is still being persecuted “for reasons of... political opinion”.</p>	
<p>STEP 4 Internal Flight Alternative QD: Article 8</p>	<p><b>INTERNAL FLIGHT ALTERNATIVE:</b> Not all countries apply the concept of an IFA. In those that do and in order that a finding be made that the applicant has an IFA the DM must raise the issue at the interview and clearly state where in the applicant’s country the suggested IFA is located. In order to qualify as an IFA the specified location must be (i) safe for the applicant and (ii) reasonable for the applicant to remain in. The particular circumstances of the applicant must be taken in to account in this analysis.</p>	
<p>STEP 5 Exclusion QD: Article 12</p>	<p><b>EXCLUSION:</b> Is there any indication that the applicant may have been associated with events that could bring him/her within the application of the exclusion clauses in Article 1F (a), (b) or (c) of the Convention?</p>	
<p>STEP 6 Conclusion APD: Articles 9 (2), 34 (3)</p>	<p><b>CONCLUSION:</b> The DM should state his/her conclusions with supporting reasons in fact and in law and, if the conclusion is negative, refer to any available remedies.</p>	

**GENERAL INSTRUCTIONS**

As already noted the basic rule in protection analysis is that one first analyses whether an applicant is entitled to Convention Refugee status [CR] and if he or she is not, then the analysis moves on to whether he or she qualifies for Subsidiary Protection [SP]. [Note Article 2 (e) below requires this order of analysis.] In some countries, where there is a further discretionary protection offered by the state, the Decision Maker [DM] may be required to analyse that as well if no CR or SP status is established. This Checklist only deals with an analysis of whether an Applicant qualifies for SP status.

Article 2 (e) of the EU Qualification Directive [QD] sets out the definition of a person eligible for SP noting that it can only apply to a person “*who does not qualify as a refugee*”:

“person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom **substantial grounds** have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a **real risk of suffering serious harm as defined in Article 15**, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country... (emphasis added)

Article 15 of the QD defines ‘serious harm’:

Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Consequently, in order for a person to qualify for SP it must be shown that there are “substantial grounds” to believe that if the person is returned to his or her country of origin or, if stateless, his or her country of former habitual residence he or she would face a “real risk of suffering serious harm”. Article 15 defines “serious harm”. If any of the three grounds applies and the standard of proof is met then that person should be granted SP.

The suggested analysis below leads the DM through the elements of the SP definition in an orderly and principled way. The references in the boxes to the left are the governing EU law as laid out in the QD in all countries of the EU irrespective of whether these provisions have been incorporated into national law.

ISSUES	ISSUE DETAILS	✓
The Facts of the Claim Article 4	<b>THE FACTS:</b> The DM will have already established the facts in the case – through the assessment of credibility, including COI – when analysing CR. Now, the DM needs to turn his or her attention to whether the facts accepted qualify the Applicant for SP.	
Article 15 (a)	<b>DEATH PENALTY OR EXECUTION:</b> If the facts do not disclose that there are “substantial grounds” to believe that the applicant would, upon return to his or her country – or if stateless, country of former habitual residence – face a “real risk of serious harm” for these reasons then the DM will move on to an analysis of Article 15 (b).	
Article 15 (b)	<b>TORTURE OR INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:</b> If the facts do not disclose that there are “substantial grounds” to believe that the applicant would, upon return to his or her country – or if stateless, country of former habitual residence – face a “real risk of serious harm” for these reasons then the DM will move on to an analysis of Article 15 (c).	
Article 15 (c)	<b>SERIOUS AND INDIVIDUAL THREAT TO A CIVILIAN’S LIFE OR PERSON BY REASON OF INDISCRIMINATE VIOLENCE IN SITUATIONS OF INTERNATIONAL OR INTERNAL ARMED CONFLICT:</b> Subsection (c) is the most complicated area in analysing SP; it has been litigated frequently within the EU. The leading case in EU law is that of <i>Elgafaji</i> (ECJ. Feb, 2009) which established, among other things, that a person can be eligible for SP simply by being on the territory in question where the level of violence pursuant to subsection 3 is sufficiently extreme – even without being personally targeted.  If the facts do not disclose that there are “substantial grounds” to believe that the applicant would, upon return to his or her country or country of former habitual residence, face a “real risk of serious harm” for these reasons then the applicant is not entitled to SP.	
Protection Article 7	<b>PROTECTION:</b> Where a DM has decided that the applicant falls within the SP definition he or she will need to apply the same principles with respect to SP as applied to the analysis of CR status.	
IFA Article 8	<b>INTERNAL FLIGHT ALTERNATIVE:</b> In countries where IFA is applied and where a DM has decided that the applicant falls within the SP definition he or she will need to apply the same principles with respect to SP as applied to the analysis of CR status.	



# WRITTEN PROTECTION DECISION CHECKLIST

## Level III: Nexus Analysis

The Decision-Maker must carefully and thoroughly collect all the facts surrounding the feared persecution in order to evaluate the reason why the persecutor is targeting the applicant. An applicant may have a well-founded fear of persecution for more than one Convention ground. An applicant may have a fear of persecution upon return to his or her country but if that persecution is not tied to a Convention ground then the Applicant is not a Convention refugee. The references below are to the QD.

Article 1 A (2) of the Convention Relating to the Status of Refugees, as amended by the Protocol, defines a refugee. Article 2 (c) of the EU Qualification Directive [QD] sets out the definition of a “refugee”:

*“Refugee” means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;*

**Reasons for Persecution/Nexus** refers to the connection between the feared persecution and a Convention ground. Article 10 (1) of the EU Qualification Directive provides guidance on the meanings of the five Convention grounds. For an Applicant to be eligible for refugee status the persecution feared must be “...for reasons of race, religion, nationality, membership of a particular social group Or political opinion”. [Emphasis added] Note carefully Article 10 (2) of the EU Qualification Directive:

*When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.*

ISSUES	DETAILS	✓
<b>RACE</b> Article 10 (a)	“the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;”	
<b>RELIGION</b> Article 10 (b)	“the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;”	
<b>NATIONALITY</b> Article 10 (c)	“the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;”	
<b>MEMBERSHIP OF A PARTICULAR SOCIAL GROUP</b> Article 10 (d)	<p>“a group shall be considered to form a particular social group where in particular:</p> <ul style="list-style-type: none"> <li>members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, <b>and [Emphasis added]</b></li> <li>that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;</li> </ul> <p>depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;”</p> <p>The analysis of MSPG is one of the most difficult concepts in refugee analysis and has been the subject of innumerable articles and court cases. The UNHCR’s position is that a MSPG may fall within either of the above definitions but need fall within both. [See UNHCR Guidelines on Membership of a Particular Social Group.] It should be recalled that the EU Asylum Procedures Directive, Article 5 allows member states to give greater – but not less – protection to protection claimants in which case states are free to follow the UNHCR definition.</p>	
<b>POLITICAL OPINION</b> Article 10 (e)	“the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.”	



# WRITTEN PROTECTION DECISION CHECKLIST

## Level III: Internal Flight Alternative Analysis

### GENERAL DIRECTIONS

Neither the 1951 Convention nor the EU Directives require or even suggest that the fear of being persecuted or at risk of serious harm need always extend to the whole territory of the refugee's country of origin. The concept of an internal flight or relocation alternative therefore refers to a specific area of the country where there is no risk of a well-founded fear of persecution or risk of serious harm and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him or herself and live a reasonably normal life. Consequently, if internal flight or relocation is to be considered in the context of refugee status determination, a particular area must be identified by the Decision Maker and the claimant provided with an adequate opportunity to prepare or respond.

The analysis of whether an IFA would apply in a given case requires a two-fold analysis: (i) Is an IFA "relevant"? (ii) If an IFA is relevant is it "reasonable"? The "burden" of establishing that an IFA may apply in a given claim falls on the decision maker who must identify a specific IFA [town] and give the applicant adequate notice of it so that he or she may prepare and able to respond.

ISSUES	ISSUE DETAILS	✓
<b>STEP I: IDENTIFICATION OF THE IFA</b>	If the Decision Maker intends to rely upon a possible IFA, then the burden to identify a specific location is on him or her and the applicant must be provided with adequate notice and the opportunity to respond.	
<b>STEP II: THE RELEVANCE TEST</b>	Given the circumstances of the particular case is an IFA relevant? In other words, if the applicant were able to relocate would he or she be able to safely, legally and practically get to the suggested IFA?	
Is the IFA Accessible?	Can an applicant reach the IFA safely, practically and legally?	
Is the Agent of Persecution the State?	It is a presumption that states are in full control of their territory such that if the state is the persecutor an IFA is not possible. However, as with any presumption, this can be displaced with evidence that in any particular case a state is not in control of an area where an IFA may exist.	
Is the Agent of Persecution a non-state Agent?	If a non-state agent is the feared persecutor or the potential cause of a risk of serious harm then an IFA will only be relevant if (a) that agent will not pursue the applicant or if he or she does so (b) there will be effective state protection.	
Is the applicant at risk of other persecution or serious harm?	If the applicant would be at risk of persecution or serious harm in the IFA or would be exposed to new forms of persecution or serious harm then the IFA is not relevant.	
<b>STEP III: THE REASONABLENESS TEST</b>	Only if an IFA is relevant is it necessary to proceed to the second step of determining whether, in all the circumstances of this Applicant's case, the IFA is "reasonable". An IFA is only "reasonable" if the applicant is able to live a relatively normal life there free from undue hardship.	
What are the applicant's personal circumstances?	Many factors, taken either individually or collectively, must be weighed in establishing whether this particular applicant could live a relatively normal life there free from undue hardship. Factors include such things as: age, gender, health, disability, family situation and relationships, ethnicity, religion, cultural, social and political factors, language, education, professional and work background and opportunities and so on.	
Has the applicant suffered past persecution?	Will the relocation to the IFA increase the likelihood of further trauma based upon past persecution or serious harm?	
Will the applicant be safe and secure?	Is the area in which the IFA is located currently stable such that it may provide safety, security and is the political situation reasonably durable? This is particularly relevant in situations of internal political or armed conflict.	
Does the administration in the IFA respect human rights?	Are specific fundamental human rights which are important to the individual respected in the area of the IFA?	
Can the applicant survive economically?	Can the applicant make a reasonable living in the IFA?	

**CONVENTION, ARTICLE 1 F:**

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

The rationale for the exclusion clauses is to deny protection to applicants who have committed international crimes so severe as to remove from them the right to international protection. Given the seriousness of this consequence this clause must be applied restrictively and with great care and only after a full assessment of the individual circumstances of the case. Exclusion need not be analysed unless there is a tentative determination that the applicant is entitled to protection and there are serious reasons for considering that exclusion may be an issue.

The Exclusion provisions are incorporated into European law under provisions of the QD. While the QD provision on refugees [Article 12] closely mirrors the Convention definition as outlined above, Article 17 [Subsidiary Protection] differs somewhat. The definition of a “serious” crime does not require that it be “non political” nor committed “outside the country of refuge” nor “prior to his or her admission as a refugee”. Sub paragraph 3 also adds a further provision:

Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

It is the responsibility of the decision maker to establish that an applicant is excludable; the “serious reasons” referred to require a standard of proof that is less than a balance of probabilities.

ISSUES	ISSUE DETAILS	✓
ARTICLE 1 F (a)	<i>F: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.</i>	
Crimes Against Peace	According to the London Charter a <b>crime against peace</b> involves the “planning, preparation, initiation or waging of a war of aggression, or a war in violation international treaties, agreements, or assurances, or participation in a common conspiracy for the accomplishment of any of the foregoing”. Given the nature of this crime, it can only be committed by those in a high position of authority representing State or a State-like entity. In practice, this provision has rarely been invoked.	
War Crimes	Certain breaches of international humanitarian law constitute <b>war crimes</b> . Although such crimes can be committed in both international and non-international armed conflicts, the content of the crimes depends on the nature of the conflict. War crimes cover such acts as wilful killing and torture of civilians, launching indiscriminate attacks on civilians, and wilfully depriving a civilian or a prisoner of war of the rights of fair and regular trial.	
Crimes Against Humanity	The distinguishing feature of <b>crimes against humanity</b> , which cover acts such as genocide, murder, rape and torture, is that they must be carried out as part of a widespread or systematic attack directed against the civilian population. An isolated act can, however, constitute a crime against humanity if it is part of a coherent system or a series of systematic and repeated acts. Since such crimes can take place in peacetime as well as armed conflict, this is the broadest category under Article 1F(a).	
International Instruments	Amongst the various international instruments which offer guidance on the scope of these international crimes are the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the four 1949 Geneva Conventions for the Protection of Victims of War and the two 1977 Additional Protocols, the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the 1945 Charter of the International Military Tribunal (the London Charter), and most recently the 1998 Statute of the International Criminal Court.	

ARTICLE 1 F (b)	<i>F: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.</i>	
Serious	'Serious' refers to the nature of the crime. The nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, the nature of the penalty, and whether most jurisdictions would consider it a serious crime are all relevant factors. Consequently, while murder, rape and armed robbery would be serious offences, petty theft would not.	
Non-Political Crime	There must be a link between the crime and its alleged political objective; the act in question must also be proportionate to the political objective. Terrorist-type actions which are generally disproportionate to any political objective will normally be 'non-political'. <b>[Applicable only to "refugee" analysis]</b>	
Outside Country of Refuge	The crime must have been committed outside the country of refuge and before the applicant applied for protection. If the crime was committed after admittance, then the country's criminal laws come into play. <b>[Applicable only to "refugee" analysis]</b>	
ARTICLE 1 F (c)	<i>F: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.</i>  As the purposes and principles of the United Nations are quite broad, the scope of this category is unclear and rarely applied except in extreme circumstances. Where an activity attacks the very basis of the international community's coexistence. Such activity must have an international dimension. It would appear that, generally speaking, only persons who have been in positions of power in a State or State-like entity would appear capable of committing such acts. While some terrorist activities may apply here they may also be covered under Article 1 F (b).	
QD: ARTICLE 17 (3)	Has the applicant committed (i) one or more crimes – not listed in paragraph 1 – prior to his or her admission to the Member State which would be punishable in the Member State with imprisonment and (ii) left his or her country of origin solely in order to avoid punishment for these crimes?	
<b>FACTORS TO CONSIDER</b>	Apart from a thorough consideration of all the facts in the claim, a decision maker must always consider the factors listed below.	
Individual Responsibility	For exclusion to be justified, individual responsibility must be established. This can occur where an individual has committed, or made a substantial contribution to the act in question knowing that his or her contribution would facilitate the criminal act. While a presumption may arise due to the person's senior position in an organisation the decision maker must still consider the organisational structure and the person's actions. The mental element [mens rea] must also be present.	
Defences	<b>Duress</b> may be a defence where the person was in imminent danger to his or her life or to continuing serious bodily harm and the act he or she perpetrated is not more serious than the act feared. <b>Superior Orders</b> may apply only where the applicant was legally obliged to obey the orders, the order itself was not obviously unlawful and the applicant was not otherwise aware that the order was unlawful. In some cases, where an applicant has already been appropriately punished for the crime, exclusion may no longer apply; although in the case of particularly heinous crimes this exception may not apply.	
Proportionality	The incorporation of a proportionality test when considering exclusion and its consequences provides a useful analytical tool to ensure that the exclusion clauses are applied in a manner consistent with the overriding humanitarian object and purpose of the 1951 Convention. The concept has evolved in particular in relation to Article 1F(b) and represents a fundamental principle of many fields of international law. As with any exception to a human rights guarantee, the exclusion clauses must therefore be applied in a manner proportionate to their objective, so that the gravity of the offence in question is weighed against the consequences of exclusion. Such a proportionality analysis would, however, not normally be required in the case of crimes against peace, crimes against humanity, and acts falling under Article 1F(c), as the acts covered are so heinous. It remains relevant, however, to Article 1F(b) crimes and less serious war crimes under Article 1F(a).	



## COUNTRY OF ORIGIN INFORMATION JUDICIAL CHECKLIST<sup>1</sup>



When assessing Country of Origin Information (COI) in the context of deciding asylum or asylum-related cases judges may find the following nine questions, developed by the International Association of Refugee Law Judges, useful:

### RELEVANCE AND ADEQUACY OF THE INFORMATION

- i) How relevant is the COI to the case in hand?
- ii) Does the COI source adequately cover the relevant issue(s)?
- iii) How current or temporally relevant is the COI?

### SOURCE OF THE INFORMATION

- iv) Is the COI material satisfactorily sourced?
- v) Is the COI based on publicly available and accessible sources?
- vi) Has the COI been prepared on an empirical basis using sound methodology?

### NATURE / TYPE OF THE INFORMATION

- vii) Does the COI exhibit impartiality and independence?
- viii) Is the COI balanced and not overly selective?

### PRIOR JUDICIAL SCRUTINY

- ix) Has there been judicial scrutiny by other national courts of the COI in question?

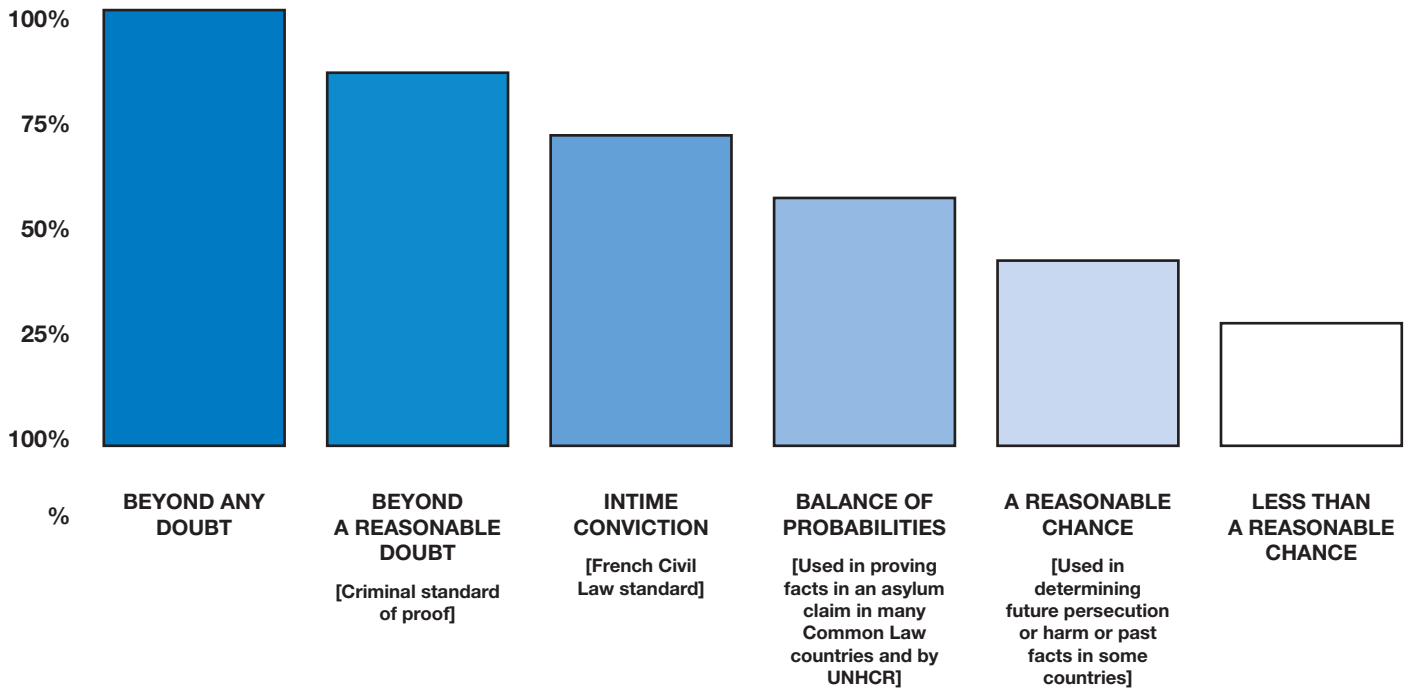
A further very useful study on the use of COI in the European context was done by the Hungarian Helsinki Committee (HHC) in 2007: Country Information in Asylum Procedures. It may be found at: <http://helsinki.hu/Kiadvanyaink/htmls/552>

A follow-up on the HHC Report – which has been funded by the EU Refugee Law Fund, the UNHCR (Regional Representation in Budapest), the IARLJ, and ACCORD amongst others is just being concluded as of September 2011.

<sup>1</sup> This excerpt has been kindly provided by the IARLJ and its author, Dr. Hugo Storey. The full paper Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist was presented at the Seventh Biennial IARLJ World Conference, Mexico City, 6-9 November 2006 by members of the COI-CG Working Party. The full article with supporting text may be found at: <http://www.iarlj.org/conferences/mexico/images/stories/forms/WPPapers/Hugo%20StoreyCountryofOriginInformationAndCountryGuidanceWP.pdf>



## STANDARDS OF PROBABILITY (CREDIBILITY ASSESSMENT) AND ASSESSMENT OF FUTURE RISK (PERSECUTION)



The chart above is representational only. It is meant to give a simplified view of how “standards of probability” and “assessments of future risk” operate. There are many such “standards” but this chart seeks to identify only the more common ones. The numerical values are inserted only for scale purposes and do not represent a “numerical” factor which each level should reach.





# INTERPRETERS' EVALUATION REPORT

Full name of interpreter:	
Name and title of supervisor:	

Rating <sup>1</sup>	1	2	3	4	5
Personal behaviour is appropriate to work for UNHCR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Respect for job requirements (according to ToR's)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Competence for the job	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Questioning and listening skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability of problem-solving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managing relationships with refugees or colleagues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remains neutral	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is capable of working in a team	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is keen to improve his/her interpreting skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintains confidentiality and integrity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shows cultural sensitivity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The ability to meet deadlines / timelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
First language knowledge is adequate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Second language knowledge is adequate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Knowledge of additional languages	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Comments:</b>

.....  
SIGNATURE OF THE SUPERVISOR

.....  
DATE

<sup>1</sup> 1. Not demonstrated  
4. Exceptionally demonstrated

2. Partially demonstrated  
5. Not applicable

3. Demonstrated

# ANNEX 2: LIST OF ACRONYMS

<b>APD</b>	EU Asylum Procedures Directive
<b>AS</b>	Asylum-Seeker. Other commonly-used terms in similar contexts are applicant and claimant.
<b>ASQAEM</b>	Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern sub-region
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>COI</b>	Country of Origin Information
<b>DM</b>	Decision-maker
<b>EAC</b>	European Asylum Curriculum
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ERF</b>	European Refugee Fund of the European Commission
<b>FDQ</b>	Further Developing Quality in the EU Project
<b>HHC</b>	Hungarian Helsinki Committee
<b>IARLJ</b>	International Association of Refugee Law Judges
<b>IFA</b>	Internal Flight Alternative. Also commonly used: internal relocation and internal protection alternative.
<b>IV</b>	Interviewer
<b>MPSG</b>	Membership of a Particular Social Group
<b>PDD</b>	Professional Development Day
<b>PTSD</b>	Post-traumatic Stress Disorder
<b>QAT</b>	Quality Audit Team
<b>QD</b>	EU Qualification Directive
<b>QI</b>	Quality Initiative
<b>RSD</b>	Refugee Status Determination
<b>STC</b>	Safe Third Country
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UASC</b>	Unaccompanied Asylum Seeking Children
<b>UKBA</b>	United Kingdom Border Agency
<b>UNHCR</b>	United Nations High Commissioner for Refugees

Further details on these terms can be found in this Manual and the footnotes.



# Further Developing EU Asylum Quality

A multi-phase project for Southern and Central Europe

The Further Developing Asylum Quality project (FDQ) in 2010-11 has examined and developed quality assurance mechanisms in the asylum procedures of selected Member States: Bulgaria, Cyprus, Greece, Hungary, Italy, Poland, Portugal, Romania and Slovakia. It has involved the assistance of the asylum authorities of Austria, Germany and the United Kingdom who have provided good practice advice.

The objective has been to improve the quality of asylum procedures by building the capacity of the asylum authorities responsible for examining and taking decisions on asylum applications at first and second instances, and to ensure the effective and sustainable functioning of national Quality Assurance Mechanisms (QAMs). In this way, the project has supported, through practical co-operation, the building of effective and sustainable internal review mechanisms that will regularly and objectively maintain good quality standards in EU Member States' asylum systems.



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