

FRAMEWORK FOR IDENTIFYING GAPS IN PROTECTION CAPACITY

Explanatory Note:

States bear the prime responsibility for ensuring the protection of all those on their territory, including refugees and asylum-seekers. This analysis, therefore, is principally directed at protection the State under review provides to refugees and asylum-seekers. It is designed to identify where gaps in protection exist and to indicate where capacity building efforts are needed to bridge such gaps.

Given that UNHCR supports and supplements the protection efforts of asylum countries, the framework also should serve to indicate where a lack of capacity within UNHCR hinders the fulfillment of its core mandate functions.

This framework is organized into different sections, each of which reflects a core component of protection, as recognized in international treaties, most notably the 1951 Convention and 1967 Protocol, the 1969 OAU Refugee Convention, as well as in Conclusions of the Executive Committee of the UNHCR, and in the Agenda for Protection. Specific references to these are provided in Annex 1. The questions in each section of the framework are intended to help **determine to what extent the reality in the host country meets the protection requirements. Where it falls short, that constitutes a gap.**

The framework is not meant to be a statistic-gathering instrument, nor a substitute for UNHCR protection-related and sectoral guidelines and monitoring tools. The framework also is not meant to be filled out as a questionnaire. Rather, it should be used to draw together information that is available from UNHCR, government, and other sources to **provide a concise composite picture of gaps in protection, of no more than 40 pages. References to more detailed work and/or analysis should be provided in an annex to the document.**

Identifying gaps in protection is a **necessary initial step to prioritizing and strategizing** on measures to strengthen protection capacity.

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1. RECEPTIVE LEGAL, POLITICAL AND SOCIAL ENVIRONMENT

1.1. Demographic Profile

- Briefly describe the refugee and asylum seeker caseload. Include information on:
Demographic and socio-economic profile disaggregated by age, gender and ethnic group:
Areas of origin;
Vocational background;
Identification of groups with special needs;
Location;
Areas of possible return.
- If accurate figures are not available, indicate why.
- Is there a regular UNHCR presence in refugee camps, restricted settlements and/or impacted urban areas?
- Briefly describe UNHCR's country programme, the size of donor contributions and the sectors that have been highlighted over the past five years, include significant constraints.

1.2. A National and Administrative Framework Exists for the Protection of Refugees

- Describe the major statutes and administrative institutions that have a bearing on refugee protection.
What policy declarations are relevant?
What government actors are involved in making and implementing refugee policy?

1.3. Major International Legal Instruments Have been Ratified to Enhance the Protection of Refugees

- Set out the major international human rights treaties to which the State has acceded.
Note any reservations thereon.

1.4. Strong and Effective Partnerships Are in Place to Strengthen Protection Capacity

- Describe the major international and national UN agencies and NGOs who are also involved in protection of refugees and asylum-seekers.
To what extent are they actively engaged in joint planning, field monitoring and evaluation exercises?
Do they have field presence?
- Do strong partnerships exist between host countries, donor countries, UNHCR, other UN agencies, NGOs, civil society actors and refugees to strengthen protection capacity?
- Is there close cooperation in the supervision of implementation of the 1951 Convention, the 1967 Protocol and the 1969 OAU Refugee Convention between UNHCR and the host country? Does UNHCR have the right to see individuals of concern, and their files, at any time?

1.5. The Host Environment Is Receptive to Asylum-Seekers and Refugees

- What are the local reception and attitudes towards refugees and asylum-seekers?
Do refugees place a strain on resources (e.g. water, food, fuel) and services?
- Are there public awareness programmes in place that focus on the positive, social, economic and cultural contributions refugees can make?
Are teaching materials provided and used in schools to enhance public awareness and understanding of refugee issues?
Is there a media strategy in place to inform the public on refugee issues?
- Do census and other demographic surveys include refugees?

1.6. Refugee Issues Are Anchored within National, Regional and Development Agendas

- Are refugees included or impacted by national poverty reduction and development strategies?
- Are international and regional development actors contributing resources to underpin self-reliance and local integration for refugees in a manner that sustains the viability of local communities?
- Do refugees contribute to the local or national economy? Are they regarded an economic asset?

2. ADMISSION IN SAFETY TO THE COUNTRY OF REFUGE

2.1. Refugees Are Admitted into the Territory

- What government authority controls access to the territory?
- What guidance and instructions are provided to border officials regarding refugees and asylum-seekers?
 - Where instructions exist, do they include guidance on the appropriate standards of treatment of asylum-seekers?
 - Are border officials required by law to refer asylum cases to the central authority competent in asylum matters?

2.2. The Principle of Non-Refoulement Is Fully Respected

- Are all persons arriving at the frontier seeking protection admitted into the territory of the State?
- Does the State use the concept of extraterritorial zones (borders, airports, sea) to restrict access?
- Are there reported cases of refugees being rejected at the border and/or cases of forcible return without a proper determination of their protection needs?
 - What are the reasons given for this (e.g. lack of resources, threats to national security, infiltration by armed groups, drug traffickers, prevent more arrivals)?
 - How does UNHCR record cases of refoulement? What action is taken? What is the response of the authorities? Do numbers reveal the extent of the problem?
- Are refugees sent to third countries? If so, what safeguards are in place?

2.3. UNHCR Has Access to New Arrivals at Entry Points

- Does UNHCR have access to new arrivals at arrival points?
 - If not, why?
 - If so, does the Government consult with UNHCR on admission procedures?

2.4. Urgent Protection Needs Are Promptly Identified, Assessed and Addressed

- Are mechanisms in place to help identify refugees and asylum-seekers with special protection needs?
 - If so, what are they (e.g. medical/psychological assistance, special accommodation)?
 - Do victims of sexual violence receive necessary treatment and support from an early stage?
- Are the needs of unaccompanied minors and separated children addressed at the earliest possible stage?
 - If so, how (how identified, with which care arrangements are they provided and are these appropriate)?

2.5. Support Is Provided to Meet Basic Necessities of Life

- Are there measures in place to ensure that new arrivals have the basic necessities of life (e.g. food, shelter, clothing and health care)?
 - If not, why?
 - If so, who provides this assistance?
 - Is it sufficient to meet need?

2.6. Tracing Mechanisms Help Safeguard Family Unity

- Are tracing mechanisms (in country and across the border) in place for unaccompanied and separated children, and to help otherwise reunite families?
 - If not, why? If so, what agencies are involved in this work and are they coordinated?

3. REFUGEES AND ASYLUM-SEEKERS ARE REGISTERED AS SOON AS POSSIBLE

3.1. Refugees and Asylum-Seekers Are Individually Registered

- What government authorities are responsible for registration?
What agencies support them in this work?
- Are refugees and asylum-seekers individually registered in their own names?
If not, why?
If so, are dependants between 16-18 yrs of age informed that they can be registered individually?
- What mechanisms are in place to register all persons seeking protection?
What proportion of refugees and asylum-seekers has been registered individually?
How soon after arrival are refugees and asylum-seekers registered?
What are the obstacles (e.g. lack of financial and/or labour resources; verification difficulties; opportunities for fraud; reluctance to be registered etc.)?

3.2. Registration Is in Accordance with International Standards

- Does the registration process help to collect statistical data reflecting age and gender breakdown of the asylum seeker population?
- In the process of registration is special consideration given to maintaining or facilitating family unity?
- Is registration continuously updated, documenting new arrivals, births, deaths, marriages and departures?
- Is the principle of confidentiality respected in accordance with international standards?
For example:
Does registration take place in an accessible and safe location?
Are persons conducting registration exercises adequately trained?
Is there coordination among operational partners to avoid duplication and breach of confidentiality?
Is there a sufficient number of female personnel?
- Do registration forms identify separated children?
When accompanied by an adult, is the nature of the relationship between the adult and the child established by a person with appropriate training?
- Are refugees involved in the registration process?
- What registration technique/software is used by the UNHCR office, the government?

4. A LEGISLATIVE FRAMEWORK TO FAIRLY AND EFFICIENTLY DETERMINE CLAIMS TO PROTECTED STATUS

4.1. The Law Provides for Group Determination in the Case of Mass Influx Situations

- Is the concept of prima facie refugees recognized in law and administrative practice? How is it applied? Are there conditions attached to its application (e.g. status expiry after certain length of time)?

4.2. Asylum-Seekers Have Access to Fair Asylum Procedures

- Do asylum-seekers have access to individual Refugee Status Determination (RSD) procedures and if so under what legislative or administrative framework?
If not, explain why.
If so, must asylum-seekers apply for refugee status within a certain time frame?
- If there is individual RSD procedure, is it in accordance with international standards? For example, does it provide for:
 - An effective opportunity to make a refugee claim and the right not to be returned or sent to another country pending a final determination;
 - Access to relevant information in a language the asylum seeker understands and to an impartial and qualified interpreter;
 - Access to free legal advice and unhindered access to UNHCR;
 - Individual, objective and impartial decision-making by specialized and qualified personnel including the right to a personal interview;
 - Do decision makers have access to relevant current country of origin information that is in the public domain;
 - Accelerated procedures in limited cases with appropriate protection safeguards;
 - Right to data protection (particularly against country of origin);
 - Appropriate provisions to meet special needs of female and minor asylum applicants;
 - Written reasoned decision if claim is rejected or declared inadmissible and information on where and within what time frame to lodge an appeal;
 - Right of an appeal to an independent body and decision suspended until final appeal determined?
- What is the time frame from submission of an asylum claim to the rendering of a decision? What services and assistance are available in the interim?
- Are separated children assisted by the guardian during the RSD procedure?
Are guardians authorized to decide on behalf of children in line with the best interest of the child in all matters related to the child? What are the procedures for their appointment?
Are persons in charge of the RSD procedures trained in interviewing children?
Are there special facilities in place to reduce a trauma related to the interview?
Are child psychologists involved in the process?
- Is a full and inclusive interpretation of the refugee definition used?
- Is exclusion and cessation applied in a manner that is consistent with the 1951 Refugee Convention?
- Does UNHCR have an advisory or observer role?
Is UNHCR's advice on the interpretation of the refugee definition reflected in the decisions of the authorities?
- Are family members of recognized refugees, and those who may be provided with an alternative durable status, accorded the same status?
If not, what are the consequences for the family members?
- Are those who have a secondary movement record banned from re-entry to the national RSD procedures upon return from a third country?

4.3. Country of Origin and Legal Information is available and accessible to UNHCR staff, Government and NGO Involved in RSD

- Is legal and country of origin information, including background information, guidelines and position papers available and easily accessible to staff, government and partners?
Have offices access to internal protection documents? If yes, via intranet or in hard copy?
Has there been training on how to access (Website, CD-ROM, hard copies) and use country of origin information for government, NGO and staff?
- Is there an identified need for more information on part of the government and NGOs?
If yes, does the lack of information have any impact on RSD decisions taken? Have NGO workers, legal clinics, judges and individual lawyers been acquainted with tools to access protection information?
- Does UNHCR in the country produce country of origin documents that are shared with HQ and/or other offices?
Do staff monitor national legislation and jurisprudence and systematically translate and share with HQ to be uploaded into databases for future reference?
- Does UNHCR regularly provide background information to government and partners, i.e. provision of RefWorld CD-ROM, sharing of background papers?
- Do staff and authorities involved in RSD have access to internet and/or intranet and can they use CD-Rom?
Are broadband or other rapid connections to the internet available?

4.4. Complementary Forms of Protection Provided for Non-Refugees in Need of Protection

- Are complementary forms of protection provided for in law and applied in practice?

5. PROTECTION FROM THE THREAT OF VIOLENCE, COERCION OR DELIBERATE DEPRIVATION

5.1. An Effective Security System Is Present in Refugee Hosting Areas

- Is there a security presence in refugee hosting areas?
 - Who is involved (government agents, refugees, UNHCR)? Are they trained in fundamental protection principles? Are they sensitized to cultural/gender/age related issues?
 - Where refugees do participate, to what extent?
 - What is the participation of refugee women?
- How is security for refugee areas integrated into the national security apparatus?
 - Are there practical arrangements in place for cooperation on security issues with UNHCR, the Department of Peacekeeping Operations (DPKO) and other segments of the UN?
- Are effective security patrols in place that target the protection of refugee women and children as one of the priorities?
 - Who makes up these patrols?
 - Are refugees able to easily alert the security authorities of security concerns/incidents in their areas?
- What else contributes to the security of refugee hosting areas (e.g. lighting, neighborhood watch, refugee security wardens)?
- Are the security measures sufficient to meet the security needs of the residents?
 - If not, describe why. Include information on the number of known incidents of refugees and/or asylum-seekers killed and/or wounded (not of natural causes and not as a result of insufficient necessities of life).
 - What are the major motivations behind these?
 - Who are the main perpetrators of violence?
- Are refugee camps located at least 50km away from borders to minimize the risk of infiltration by armed elements and cross border attacks?
- Are there detention or jail facilities in the camps/settlements for refugee offenders?
 - Who administers them?
 - Are the facilities run in accordance with international standards?

5.2. The Civilian Character of Refugee Hosting Areas Is Maintained

- Are armed elements separated from the refugee population?
 - Are border officials and registration officials trained to correctly identify such persons at the frontier (from clothing, statements made etc.)?
 - Are combatants moved to a place of internment or disarmed before being allowed to join the refugee population?
 - Are special programmes in place, where appropriate, to disarm, demobilize and reintegrate or rehabilitate child soldiers who are among refugee populations?
 - Is there a clear agreement between UNHCR and the government regarding the hand-over of armed elements to the authorities? If so, how effective is it?
- Are there reports of forced recruitment, clandestine meetings, forcible solicitation of funds and other forms of support for armed groups?
 - What groups are usually reported in refugee hosting areas to promote their military objects (e.g. rebels, government)?
 - How are these verified and dealt with?

5.3. Mechanisms Are in Place to Prevent and Respond to Sexual and Gender Based Violence

- Are refugee adults and children subject to harmful treatment within the family, including battering, sexual exploitation, sexual abuse, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women?
- Are refugee women and girls subject to sexual and gender based violence within the community, such as rape, sexual abuse, sexual harassment and the intimidation, trafficking and forced prostitution?
- Are there reporting mechanisms for SGBV cases in place which are utilized? If so, what is the reported number of cases of SGBV?
 - Are there patterns in occurrence (e.g. more likely to occur while women are carrying out daily activities) and/or perpetrators (e.g. other refugees, aid workers, police)?
- Are measures in place to protect refugees and asylum-seekers from SGBV?
 - If so, what are they (e.g. are food distribution systems, water collection sites and sanitation facilities designed to ensure equitable access and to minimize the risk of SGBV)
 - How effective are they?
- What training is provided regarding SGBV (e.g. education and awareness building programmes targeting men, women and children)?
 - What percentage of the population participated in SGBV training?
 - If detained, are women accommodated separately from non-close male family members?
- Is there a complaints mechanism and an accountability mechanism to address potential abuse by camp workers?
- What support is available to survivors of SGBV and are they effectively accessed (e.g. psychological and legal counseling facilitating court proceedings, medical assistance, material support)?
- Do the laws of the country recognize SGBV as criminal behavior?
 - Do women have effective remedies in the national legal system for SGBV?
 - If not, why (e.g. is such violence recognized as criminal, are perpetrators prosecuted, are courts assessable, are remedies timely)?
- Are there traditional dispute mechanisms in place to arbitrate SGBV crimes and if so, do they respect survivors' rights?

5.4. Specific Programmes Are in Place to Protect Children from Abuse and Exploitation

- Are there mechanisms in place to monitor the physical security of children?
 - If so, what are they and how effective are they?
- Are children compelled to work, and if so, why?
- Are there known cases of the sexual exploitation of children and other types of abuses and or violence against children (sexual violence, child prostitution, child soldiers)?
 - What measures are in place to minimize these risks and to take action when they occur?
- Are there measures in place to assist children with mental and/or physical difficulties?
- Are children detained and if so by whom and under what circumstances?
 - If detained, are they treated in a manner that takes into account the need to be separated from adults unless it is in his or her best interest not to do so?
- If charged with a criminal offence, are children subject to procedures that take into consideration their age and the desirability of promoting their rehabilitation?
- Are child combatants separated from adult combatants and provided special assistance and rehabilitation programmes to assist them to reintegrate into civilian life?
- Are those below the age of 18 years or over considered minors?
 - What is the policy regarding the "age test" for applicants who claim to be below 18 years of age?

6. PROTECTED STATUS IS LEGALLY RECOGNIZED

6.1. The Protected Status of Refugees and Asylum-Seekers Is Recognized in Law

- What status do refugees and asylum-seekers have under law and what entitlements are attached?
 - What government authority confers such status?
 - What obstacles/constraints are there in obtaining such status?
 - What percentage of the population of concern to UNHCR have a clear status?
 - Is this status subject to an expiration period?

6.2. Documents Confirming Protected Status Are Provided

- What government authority is responsible for issuing identity documents to refugees and asylum-seekers?
 - What procedures do they use?
 - Are such documents recognized by other arms of government?
 - Do the documents have security features which prevent them from being forged?
- What proportion of refugees and asylum-seekers have been issued individual documentation?

6.3. Documents Necessary to Confirm Civil Status Are Issued

- Are newborns issued birth certificates?
- Are married couples issued marriage certificates?
 - If not, do the restrictions threaten the unity of the family?
- Are death certificates issued and, if so, by whom?
- Do refugees who marry nationals acquire the same rights as their spouse?
- Are common law marriages recognized?
 - If not, does this affect family unity?

6.4. Information Is Disseminated Regarding Rights and Responsibilities

- Is information provided to refugees and asylum-seekers on their rights and responsibilities in a language they can understand?
 - If so, who provides such information and how is it disseminated?
- Are refugees and asylum-seekers informed of changes in the quantity, type or method of services and assistance affecting them?
 - If so, how is this done, and are there measures in place to ensure that information is widely disseminated in a manner that can be understood and that reaches the most marginalized?

7. FREE MOVEMENT

7.1. Restrictions on Movement Are Limited to Those Necessary to Protect the Security of Refugees and / or National Security

- Do refugees and asylum-seekers have the right to freely move within the State?
- What law or regulation governs the movement of asylum-seekers and refugees?
 - What authority administers it?
 - What conditions govern the right to move within the territory?
 - What is the government's rationale for these?
- Are refugees and asylum-seekers confined to camps or other restrictive areas?
- If so, describe where these are located.
 - Is such confinement time-limited or indefinite?
 - What is the rationale?
 - Is their liberty restricted to outside these areas? Must permission be granted to leave such areas? Are there obstacles to obtaining such?
 - What consequences does that have for refugees (e.g. access to employment, land, market)?

7.2. Recognized Refugees Are Issued Travel Documents

- Are recognised refugees issued travel documents?
 - Who issues such documents?
 - Are these documents recognized by other arms of the government and foreign embassies?
- Do the documents have security features which prevent them from being forged?
- Are there obstacles in the way of obtaining them?
 - Are these documents free of charge?
 - Do they have a time and/or geographic limitation?
 - Can they be extended or renewed abroad?
- Are refugees required to apply for a re-entry visa to return to the host country? Must they apply for an exit visa to leave?
- Are national travel documents taken away from asylum-seekers after their claim to asylum is received?

7.3. The Right not to Be Arbitrarily Arrested and/or Detained Is Respected

- Are there reports of refugees being arbitrarily arrested and detained?
 - How and to whom are these incidents reported and are they verifiable?
 - Which authorities perpetrate such acts?
- What is the number of cases of refugees and asylum-seekers in detention?
 - Are there reliable figures to show what proportion of these is in unwarranted detention?
 - Are minimum standards respected (e.g. informed of reasons, access to the free, impartial, legal assistance; not unduly prolonged, subject to judicial review)?
- Is the detention of refugees and asylum-seekers monitored? If so, by whom?
 - Is access to UNHCR and NGOs, while detained, ensured?

8. ASSISTANCE IN MEETING PROTECTION NEEDS

8.1. Adequate Food, Water and Clothing Can Be Safely Accessed

In refugee camps and settlements:

- Is there accurate information on whether refugees have adequate food, water and clothing?
If so, what is the source of this information and what does it indicate in this regard?
- Is there an adequate food distribution system in place that is accessible and available for all refugees?
- In refugee camps and settlements with food distribution systems what proportion of refugees rely on food distribution?
Is there accurate information on key food security indicators, such as malnutrition rates; micronutrient deficiencies; and the percentage of the population with less than standard number of meals per day?
If accurate information is not available, why?
What could be done to provide it?
If only a portion of the population receives food aid, what are the eligibility criteria? Is it verified and updated periodically?
- Is food assistance provided in a protection sensitive manner?
Are there incidents of abuse in the distribution of food aid?
What is the response to these?
Are there measures to ensure that women and underrepresented groups have equal access to food and water?
- Are supplementary and/therapeutic feeding programmes in place?
If so, how is their effectiveness monitored?
- What are the sources of potable water?
Do refugees have sufficient quantity of safe water to meet domestic and individual needs?
Are sufficient measures in place to keep water points clean – and to minimize the incidence of water born diseases?
- Are refugees clothing needs met?
If so, how? If not, why?
Are sufficient other non food items provided (e.g. soap, sanitary materials)?

In non restricted environments:

- Is there accurate information on whether refugees have adequate food, water and clothing?
If so, what is the source of this information and what does it indicate in this regard?
- Are there national assistance and welfare schemes in the country?
If so, what are they and do refugees benefit from them on the same terms as nationals?
If not, are there national or international agencies that provide supplementary assistance to refugees and asylum-seekers?
Is this assistance sufficient to enable refugees and asylum-seekers to live in dignified conditions?
- If only a portion of the refugee population receives food assistance, what are the eligibility criteria?
Is it verified and updated periodically?
- What non-food items are distributed (soap, sanitary materials, etc.)? How often?

8.2. Immediate Shelter and Longer Term Housing Needs Are Effectively Addressed

- Do refugees and asylum-seekers initially have adequate and safe shelter and living spaces that provide:

- Physical protection against the elements;
- Sufficient space for basic household activities;
- Essential non-food items;
- Family unity and privacy;
- Reasonable distance of essential services;
- Recreational space available for children?
- Over time are refugees accorded rights to housing and as favourable treatment as nationals? (e.g. assistance programmes, rent controls, protection from discrimination)
 - If not, is the treatment they receive as favourable and no less favourable than accorded aliens generally in similar circumstances?
 - If not, why not?
- Are refugees taken into consideration in national housing strategies?

8.3. Refugees and Asylum-Seekers Have Access to Primary Curative and Preventative Health Care

- Do refugees and asylum-seekers have access to primary curative and preventative health care services?
 - Who provides these services? Are there obstacles to accessing them? (e.g. inadequate, insufficient number, fees for services, insufficient female health providers)
- Are refugees granted access to health services on the same terms as nationals?
 - If so, are they able to avail themselves of such services and if not, why?
- Are health services equally available to women and men?
- Do the services available to refugees and asylum-seekers include reproductive health services and family planning, psychological services, emergency services, and immunizations?
- Are there health education services?
 - Do they include training to prevent and control diseases of public importance (e.g. HIV/AIDS), to promote hygiene and sanitation awareness and training of health workers?
- What are the main health problems affecting the refugee community? How are these known and recorded?
 - What is the principle cause(s) of these problems?
 - What impact do the available health services have on reducing these problems?
- What health services are available to those with chronic medical conditions?
 - Are refugees with HIV/AIDS integrated into national health care services and treatment protocols?

8.4. Education Is Available for Children

- Do the laws and institutions governing the national education system also address the education rights of refugees and asylum-seekers?
- Do refugee children and refugee asylum-seekers have access to free elementary education?
 - Who finances such education?
- Is secondary education in different forms, including technical and vocational, generally available and accessible to refugees and asylum-seekers?
 - If not, why not?
- What percentage of refugee children between 5-17 years old are enrolled in primary and lower secondary education?
 - What percentage of children successfully complete the school year?
 - Are girls disproportionately represented in drop out rates?
 - What are the obstacles to greater school attendance?
 - What is the student-teacher ratio?
 - Are teachers qualified and well trained?
 - Do schools have sufficient textbooks and school supplies?



- Do parents have the liberty to choose schools for their children, other than those established by the public authorities (provided they meet minimum standards) to ensure their religious and moral convictions are reflected in the education of their children?
- Are the educational needs of disabled children, child soldiers and other with special needs addressed?
If so, how and by whom?

9. EQUAL BENEFIT AND PROTECTION OF THE LAW

9.1. Refugees and Asylum-Seekers Have Access to Effective Remedies in Law

- Are refugees and asylum-seekers equal before the law and are entitled without any discrimination to equal protection of the law?
- In practice, do they have effective remedies by the competent national tribunals for acts violating their rights? (free access to the courts; availability of legal aid; hearing before impartial and trained police and magistrates; procedures explained and interpretation in a language they understand)

If not, why? (note whether refugees treated differently than nationals and/or whether the absence of such safeguards is a reflection of the lack of national capacity or political will)

How has the absence of these safeguards impacted on refugees and asylum-seekers?

9.2. Fair and Public Hearings without Discrimination Are Provided for in Law

- Are refugees and asylum-seekers accorded fair and public hearings by an independent and impartial tribunal, in the determination of any criminal and/or contravention of asylum law charge? Do these include the following safeguards:

Prompt and detailed information on the nature of the charge in a language they understand;

Trial without delay and in his or her presence;

Free legal assistance and to have free legal counsel assigned when in the interests of justice to do so;

The assistance of an interpreter;

The right to appeal?

- If these standards are not observed in practice, what are the reasons for this?
Are refugees and asylum-seekers treated differently in these regards to nationals?
What have been the significant consequences for refugees and asylum-seekers?

9.3. Do Refugees and Asylum-Seekers Have Access to Traditional Forms of Justice?

What are the strengths and weaknesses of these?

How do traditional systems of justice interface with national judicial systems?

10. ABILITY TO ACHIEVE SELF-RELIANCE AND TO CONTRIBUTE TO THE HOST COUNTRY

10.1. Educational and Vocational Programmes Are in Place that Benefit Women and Men Equitably

- Do refugees and asylum-seekers have access to vocational training?
What government, international and/or non governmental agencies are involved in such training?
Is such training equally available to women and men? What are their relative participation rates?
- Do refugees and asylum-seekers have the right to access higher education on the same terms as nationals?
If not, what are the rules governing their admission?
If they meet these requirements, is higher education in practice accessible to them?
If not, why?
- Is there a demonstrable need for language training of refugees and asylum-seekers to enable them to communicate in the language of the host country?
Are language courses offered at the earliest opportunity?
Who offers such courses?
What are the obstacles to accessing language training?
- Do opportunities exist for young refugees to gain access to apprenticeship programmes?
- Do refugees and asylum-seekers including women and the host communities, participate in the design and development of self-reliance programmes?

10.2. Access to Wage Earning Employment

- Are refugees and asylum-seekers treated as favourably as nationals in regard to wage earning employment (in the formal and informal sector)?
If restrictions are applied, under what legislative and/or administrative authority?
What restrictions are applicable, what are the reasons for their imposition?
Do they distinguish between individually or prima facie recognised refugees?
Are they waived for refugees who satisfy Article 17 of the 1951 Convention (completion of three years residence; spouse and/or parent of a national)?
- Are there programmes in place to provide incentives to employers to hire refugees?
- If refugees are subject to employment restrictions, are refugees nevertheless given the most favourable treatment that is accorded to other aliens in similar circumstances?
- Are there other barriers that prevent refugees and asylum-seekers from enjoying employments rights (work permits, identity/residence cards, quotas etc.)?
- What are the consequences for refugees and asylum-seekers on restrictions on their right to engage in wage earning employment?
According to the government, what are the consequences to the host community if these restrictions were not in place?
- Have studies been done on the economic and social impact of refugees on local communities?
If yes, are the results of such studies available?

10.3. Self-Employment Opportunities Can Be Pursued

- Are refugees and asylum-seekers treated as favourably as nationals in regard to self-employment?
If not, why not?
What restrictions are applicable?
- In the case of refugees, are they treated as favourably as possible, and no less favourably than aliens in similar circumstances?

- Do refugees and asylum-seekers have access to programmes to support them to start up small businesses (grants, loans, business development services, technical assistance)? If not, why?
 - If such programmes exist, are they equally available to women and men?
 - Who administers and funds such programmes?
 - Have they been evaluated for their success?
- For those living in camps and settlements, do they have access to land and markets?
 - If not, why?
- For those living in isolated rural areas, who do not come from farming backgrounds, do they have access to other livelihood activities?
- What are the consequences for refugees and asylum-seekers on restrictions on their right to be self-employed?

10.4. There Is an Accountable Procedure for the Recognition of Foreign Diplomas

- Are the procedures in place whereby refugees can apply to have their diplomas recognized in the host state?
 - Do refugees have effective access to these procedures and does an impartial and competent authority consider their applications?
 - In this regard are refugees considered as favourably as possible and not less favourable than aliens generally in the same circumstances?

10.5. Social Security and Protection Governing Just and Favourable Conditions of Work Are Provided without Discrimination

- Are there legislation/regulations governing employment standards (remuneration, hours of work, health and safety) and social security (state benefits, such as unemployment insurance, old age and disability benefits)?
 - If so, do refugees and asylum-seekers receive equal treatment with respect to nationals?

10.6. Refugees and Asylum-Seekers Have the Right to Own Property

- Do refugees and asylum-seekers have the right to acquire and to own moveable and immovable property?
 - If restrictions apply, what are the consequences for refugees and asylum-seekers?
 - Do such restrictions apply equally to aliens in similar circumstances?
- Are refugees subject to any duties or charges on their property that are higher than those imposed on nationals?

11. OPPORTUNITIES FOR DURABLE SOLUTIONS ARE ACTIVELY ENGAGED

11.1. Voluntary Repatriation Is Organized Effectively and Refugees Are Returning in Safety and Dignity

- Do conditions in the country favour return in safety and dignity?
If not, are refugees choosing to return?
What is their motivation for doing so?
- Is UNHCR facilitating or promoting return?
What are the constraints and obstacles?
- Have surveys been conducted or are planned to provide:
Demographic and socio-economic profiles of the refugee population (including gender, age and ethnic group);
Areas of origin and preferred destinations upon eventual return;
Vocational background; and
Identification of groups with special needs.
- Has a thorough assessment been made of developments conducive to return, including absorption capacity in areas of potential return?
Is information collected in a standardized manner?
Is the database on conditions in the country of origin regularly updated?
- Has a framework to implement voluntary return been established?
Is there agreement on the establishment of tripartite commissions (host country/country of origin/UNHCR) and on fundamental issues such as reception facilities, security *en route* to final destinations, protection without recrimination, access to documentation, appropriate amnesties, property restitution; cross sectoral programmes, assistance, security procedures, rehabilitation programmes and peace and reconciliation processes?
Are these elements in place?
- Is there a UNHCR-supervised and coordinated information campaign regarding repatriation?
Have gender and age-sensitive counseling/information networks in host countries been established?
Have go-and-see assessment visits for refugee men and women been organized?
Do adult refugee women sign the VRF separately to ensure their voluntariness and are they provided counseling services?
- Are measures in place to ensure safe return travel, in particular with special needs of vulnerable groups taken into consideration?
- Are social welfare services provided to unaccompanied and separated children and special measures in place for their reception?
What measures related to the child's health, personal effects, documentation, education, security and transport are in place to ensure safety and dignity of unaccompanied and separated children in the repatriation process?
- What measures are in place to sensitize and prepare the population, particularly in the communities to which refugees will eventually be returning?
- Is returnee monitoring undertaken, involving other agencies as appropriate, to generate relevant country of origin information for potential returnees, host countries and other actors?
What are the obstacles for reintegration?
- Are there partnerships with other multilateral and bilateral actors, to link repatriation, reintegration, reconstruction, reconciliation and longer term development strategies

11.2. Local Integration Is Permitted and Refugees Become Fully Participating Members of Society

- Has the government established a framework for the long term integration of refugees

- If not, what is the rationale for doing so?
If so, what is the framework?
Which rights apply and which do not? (see Section 10 above)
- Does the State provide durable residency status to refugees and/or facilitate the naturalization of refugees?
If not, why?
 - What is the law and administrative mechanism governing the naturalization of individually recognized refugees or prima facie refugees?
What is the process?
Are there charges and/or delays in acquisition? If so, why?
Are refugee women and men treated equally under the law?
Is there a mechanism for the identification and documentation of stateless persons and are there special provisions for their naturalization?
 - Is eventual citizenship possible?
Under what time frame?
 - If naturalization is not facilitated, are there other forms of secure durable residency available?

11.3. Resettlement Functions as a Tool of Protection and Solutions

- Has resettlement been fully integrated into a comprehensive protection and durable solutions strategy?
- Does the UNHCR Branch Office have a written resettlement strategy? Does it have resettlement Standard Operating Procedures? Do the SOPs include measures to minimize the potential for malfeasance in resettlement programmes, including the appointment of an accountable officer for resettlement activities?
- Does the Branch Office have dedicated resettlement staff? Who conducts resettlement, have they received resettlement training?
- Do medical screenings and medical pre-departure preparations proceed smoothly?
If not, why?
- Are refugees selected for resettlement able to easily obtain the necessary travel documents and visas? If not, what are the obstacles?
- Who handles post-selection (pre-departure and departure arrangements such as medical examinations and furtherance, cultural orientation courses, transportation and ticketing, exit clearances with host country, visas and transit visas, transport to airport)?
- Are refugees resettled annually? How many countries are engaged in resettlement and how many refugees are resettled?
- What are the quotas of the resettlement countries?
Do they apply flexible resettlement criteria? Is their intake of refugee groups diversified?
Do they respond to special needs in an emergency situation?
Are new resettlement States offering resettlement places?
- Does 'integration potential' play a determining role in the consideration of resettlement cases?
- What is the impact of resettlement operations, if any, on the refugee community not resettled?
- What are the constraints and obstacles to a more effective resettlement programme? Are refugees identified for resettlement in accordance the UNHCR Resettlement handbook?
Do those most vulnerable or at-risk have access?
Is there a biometric registration system in place to support the identification of refugees in need of resettlement?

11.4. The Pursuit of All Durable Solutions Is Coherent and a Comprehensive Approach Is Engaged

- How comprehensive and complementary are the different durable solutions being engaged?



- Is there a comprehensive strategy being applied to a particular caseload or area?
If not, why not?
- To what extent and how are donors and countries in the region involved in efforts to find durable solutions?



ANNEX 1 REFERENCES BY CHAPTER

1. RECEPTIVE LEGAL, POLITICAL AND SOCIAL ENVIRONMENT

Ratification of International Instruments and National Framework

International Instruments

Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute), 1950
Convention relating to the Status of Refugees (the 1951 Refugee Convention), 1951
Protocol to the Convention relating to the Status of Refugees (the 1967 Protocol), 1967
Convention Governing the Specific Aspects of Refugee Problems in Africa, (OAU Refugee Convention) 1969
African Charter on Human and Peoples' Rights (Banjul Charter), 1981
African Charter on the Rights and Welfare of the Child, 1990
International Covenant on Civil and Political Rights (ICCPR), 1966
International Covenant on economic, Social and Cultural Rights (ICESCR), 1966
International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965
Convention Relating to the Status of Stateless Persons (the Statelessness Convention), 1954 and the Convention on the Reduction of Statelessness, 1961
Convention on the Rights of the Child (CRC), 1989
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

ExCom Conclusion Specific to the Promotion of Refugee Law, No. 51 -1988

"2. Called upon all States which have not yet done so to accede to the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees and, if applicable, to the 1969 Organization of African Unity (OAU) Convention governing the specific aspects of refugee problems in Africa in order to ensure the widest possible application of the basic principles of refugee law."

Agenda for Protection, Third Edition, UNHCR Geneva, October 2003

Declaration of State Parties

"3. Recognizing the importance of other human rights and regional refugee protection instruments, including the 1969 Organization of African Unity (OAU) Convention governing the Specific Aspects of the Refugee Problem in Africa and the 1984 Cartagena Declaration, and recognizing also the importance of the common European asylum system developed since the 1999 Tampere European Council Conclusions, as well as the Programme of Action of the 1996 Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighboring States, [...]"

Operative Paragraphs

*"3. Recognize the importance of promoting universal adherence to the 1951 Convention and/or its 1967 Protocol, while acknowledging that there are countries of asylum which have not yet acceded to these instruments and which do continue generously to host large numbers of refugees;
4. Encourage all States that have not yet done so to accede to the 1951 Convention and/or its 1967 Protocol, as far as possible without reservation;"*

Building Partnerships

Agenda for Protection

Goal 1, Strengthening Implementation of the 1951 Convention and the 1967 Protocol,
Goal 3, Sharing Burdens and Responsibilities more Equitably and Building Capacities to Receive and Protect Refugees, Capt. 3, 'Strengthened partnerships for protection with civil Society'

2. ADMISSION IN SAFETY TO THE COUNTRY OF REFUGE

Non-Refoulement and Exclusion

1951 Refugee Convention

Article 33, 1(c)

Non-Refoulement

"(1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

OUA Refugee Convention

Article 2(3)

"3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article 1, paragraphs 1 and 2."

CAT

Article 3

"1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

ExCom Conclusion on International Protection, No. 85 - 1998

"(q) Strongly deplores the continuing incidence and often tragic humanitarian consequences of refoulement in all its forms, including through summary removals, occasionally en masse, and reiterates in this regard the need to admit refugees to the territory of States, which includes no rejection at frontiers without access to fair and effective procedures for determining their status and protection needs;"

Agenda for Protection

Preamble

"Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law..."

Goal 1, Capt. 4

Exclusion of those undeserving of international refugee protection, including those guilty of terrorist acts

Guidelines

Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, Geneva, September 2003

UNHCR Access

ExCom Conclusion on International Protection, No. 82 - 1998

*"d) Reiterates, in light of these challenges, the need for full respect to be accorded to the institution of asylum in general, and considers it timely to draw attention to the following particular aspects:
(iv) the need for rapid, unimpeded and safe UNHCR access to persons of concern to the High Commissioner."*

Urgent Protection Needs Are Promptly Identified, Assessed and Addressed and Tracing Mechanisms

CEDAW

Article 3

“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

African Charter on the Rights and Welfare of the Child

Article 23

Refugee Children

“1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused”

CRC

Article 20

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

Article 22

“1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.”

ExCom Conclusion on International Protection, No. 89 - 2000

“Affirming the importance of accord priority attention to the protection needs of women, children, adolescents, and the elderly in the planning and implementation of UNHCR programmes and State policies.”

Agenda for Protection

Goal 6

Meeting the protection needs of refugee women and children

Guidelines

Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response, UNHCR Geneva, 2003

Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations, Inter-Agency Lessons Learned Conference Proceedings, Geneva, March 2001

Refugee Children – Guidelines on Protection and Care, Geneva, 2002

Refugee Children, EC/GC/02/9, April 2002

Inter-Agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, Geneva, 2004



Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UNHCR Geneva, 1997
Refugee Women, EC/GC/02/8, UNHCR Geneva, April 2002
UNHCR Guidelines on the Protection of Refugee Women, Geneva, July 1991

Support Is Provided to Meet Basic Necessities of Life

Guidelines

Reception of Asylum-Seekers, Including Standards of Treatment in the Context of Individual Asylum Systems, EC/GC/01/17, September 2001
UNHCR Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations, Geneva, January 2004

3. REFUGEES AND ASYLUM-SEEKERS ARE REGISTERED AS SOON AS POSSIBLE

Registration

1951 Refugee Convention

Article 27

Identity Papers

"The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document."

ExCom Conclusion on Registration of Refugees and Asylum-Seekers, No. 91 - 2001

"Welcoming the discussion which took place on registration in the context of the Global Consultations on International Protection;

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

Agenda for Protection

Goal 1, Capt. 11

Better Registration and Documentation of Refugees

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

UNHCR to work with States towards ensuring the provision of financial and technical support, including as regards training, equipment, and materials to enable, particularly, developing host States to undertake registration and issuance of documents to refugees, in recognition that this is primarily a State responsibility.

States, UNHCR and relevant partners to ensure that those carrying out registration of camp populations and registration for voluntary repatriation are adequately trained, including in gender and age-sensitive interviewing techniques.

States and other relevant partners to consider how to make available and accessible their expertise, including through the provision of human resources, to assist UNHCR's ongoing effort to improve its own systems for registration and documentation of refugees.

UNHCR to issue operational standards and guidelines with regard to registration and population data management, revise its 1994 Registration Guide and develop registration and data management training modules. In addition, UNHCR to strengthen field registration support (methodologies, systems, materials, training and support missions), including by drawing on States' existing expertise and human resources.

States and UNHCR to introduce new techniques and tools to enhance the identification and documentation of refugees and asylum-seekers, including centrally, biometric features, and to share these with a view towards developing a more standardized worldwide registration system.

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

States, UNHCR and other relevant partners to use registration data to identify and make specific assistance and protection arrangements, where appropriate, for: women with any special protection concerns, unaccompanied and separated children, child- and single-headed households, as well as handicapped refugees and the elderly."



Guidelines

UNHCR Handbook for Registration: Procedures and Standards for Registration, Population Data Management and Documentation (Provisional Release), Geneva, September 2003
Practical Aspects of Physical and Legal Protection with Regard to Registration, EC/GC/01/6, 2001

4. A LEGISLATIVE FRAMEWORK TO FAIRLY AND EFFICIENTLY DETERMINE CLAIMS TO PROTECTION

Group Determination in the Case of Mass Influx Situations

ExCom Conclusion on International Protection, No. 85 -1998

“(a) Welcomes that many States continue to grant asylum to refugees, both on an individual basis and in situations of mass influx, in accordance with international law and with internationally established principles and standards, but deplores the numerous and serious breaches of such law, principles and standards by some States;

(r) Strongly urges States to devise and implement procedures for handling refugee claims which are consistent with protection principles provided for in applicable universal refugee instruments and in regional refugee instruments, consistent with international standards, as well as with the standards recommended by the Executive Committee.”

See also ExCom Conclusion on Protection of Asylum-Seekers in Situations of Large Scale Influx, No. 22, (XXXII), 1981,

Agenda for Protection

Goal 1, Capt. 10

More effective and predictable responses to mass influx situations.

Guidelines

Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR Geneva, 1992
Protection of Refugees in Mass Influx Situations: Overall Protection Framework, UNHCR, EC/GC/01/4, February 2001

Access to Fair Asylum Procedures

ExCom Conclusion on International Protection No. 87 - 1999

“(j) Reiterates that the institution of asylum is of crucial importance to the international protection of refugees; re-emphasizes the importance of ensuring access to asylum procedures; recalls Conclusions No. 15 (XXX) of 1979 and No. 58 (XL) of 1989 on refugees without an asylum country and irregular movement of asylum-seekers; and affirms, in this regard, that notions such as "safe country of origin", "internal flight alternative" and "safe third country", should be appropriately applied so as not to result in improper denial of access to asylum procedures, or to violations of the principle of non-refoulement;”

Complementary Forms of Protection

ExCom Conclusion on International Protection, No. 87- 1999

“(f) Reaffirms that the 1951 Convention relating to the Status of Refugees and the 1967 Protocol remain the foundation of the international refugee regime; recognizes, however, that there may be a need to develop complementary forms of protection, and in this context, encourages UNHCR to engage in consultations with States and relevant actors to examine all aspects of this issue.”

See also ExCom Conclusion on International Protection No. 89 (LI), 2000

Agenda for Protection

Goal 1, Capt. 3

Provisions of complementary forms of protection to those who might not fall within the scope of the 1951 Convention, but require international protection

“Within the framework of its mandate, ExCom to work on a Conclusion containing guidance on general principles upon which complementary forms of protection should be based, on the persons who might benefit from it, and on the compatibility of these protections with the 1951 Convention and other relevant international and regional instruments.

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

5. PROTECTION FROM THE THREAT OF VIOLENCE, COERCION OR DELIBERATE DEPRIVATION

An Effective Security System Is Present in Refugee Hosting Areas

ExCom Conclusion on the Civilian and Humanitarian Character of Asylum, No. 94 - 2002

“Reaffirming the importance of States, UNHCR and other relevant actors, integrating safety and security concerns from the outset of a refugee emergency into refugee camp management in a holistic manner.”

Agenda for Protection

Goal 4, Capt. 1

The resourcing of States for securing the safety of refugees and for the separation of armed elements from refugee populations

“ExCom to give policy directions through adoption of a Conclusion that would set out guiding considerations for the preservation of the civilian character of asylum.

UNHCR to develop practical tools, including operational guidelines that include procedures and standards (in consultation with States, relevant United Nations entities and other interested agencies, such as the ICRC) and to work with these partners in their pilot application in certain specifically identified refugee situations.

UNHCR to develop its own institutional capacity, through an enhanced refugee security project, to assist States in ensuring the physical safety of refugees.

States to work in good faith, drawing on ExCom guidance, in giving priority to preserving the civilian character of asylum, including by making genuine efforts to separate combatants from refugee populations, and to ensure the physical security of refugees.

To establish a viable operational framework for ensuring refugee security, States to explore practical arrangements for cooperation on security issues with UNHCR, the Department of Peacekeeping Operations (DPKO) and other segments of the United Nations.

States and UNHCR to explore how to provide material support to UNHCR to establish standby mechanisms for the deployment of human security officers in refugee situations, including emergencies in which insecurity is a serious problem.

UNHCR to identify partnership opportunities between host governments, donors and UNHCR to strengthen national capacity to manage refugee-related security issues.”

Guidelines

Protection Aspects of Physical Security in Refugee Camps, UNHCR Handbook, May 2000

The Civilian Character of Refugee Hosting Areas

OAU Refugee Convention

Article 3

“1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.”

ExCom Conclusion on the Civilian and Humanitarian Character of Asylum, No. 94 - 2002

“Acknowledges that host States have the primary responsibility to ensure the civilian and humanitarian character of asylum by, inter alia, making all efforts to locate refugee camps and settlements at a reasonable distance from the border, maintaining law and order, curtailing the flow of arms into refugee camps and settlements, preventing their use for the internment of prisoners of war, as well as through the disarmament of armed elements and the identification, separation and internment of combatants; Recommends that action taken by States to ensure respect for the civilian and humanitarian character of asylum be guided, inter alia, by the following principles;

Respect for the right to seek asylum, and for the fundamental principle of non-refoulement, should be maintained at all times;

Measures for the disarmament of armed elements and the identification, separation and internment of combatants should be taken as early as possible, preferably at the point of entry or at the first reception/transit centres for new arrivals;

To facilitate early identification and separation of combatants, registration of new arrivals should be conducted by means of a careful screening process;

Refugee camps and settlements should benefit from adequate security arrangements to deter infiltration by armed elements and the strengthening of law and order;
Once identified, disarmed and separated from the refugee population, combatants should be interned at a safe location from the border;
Where the granting of refugee status is based on group determination, civilian family members of combatants should be treated as refugees and should not be interned together with them;
Combatants should not be considered as asylum-seekers until the authorities have established within a reasonable timeframe that they have genuinely and permanently renounced military activities, once this has been established, special procedures should be put in place for individual refugee status determination, to ensure that those seeking asylum fulfill the criteria for the recognition of refugee status, during the refugee status determination process, utmost attention should be paid to article 1F of the 1951 Convention, in order to avoid abuse of the asylum system by those who do not deserve international protection;
Former child soldiers should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation;
Where necessary, host States should develop, with assistance from UNHCR, operational guidelines in the context of group determination to exclude those individuals who are not deserving of international refugee protection;"

Agenda for Protection

Goal 4, Capt. 3

Prevention of military recruitment of refugees, including refugee children

"States to take concrete measures to reduce the risk of and, to the extent possible, prevent the forcible recruitment of refugees, in particular refugee children, including by ensuring access to education and vocational training.

States that have not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict to consider doing so, with a view to early accession.

States, UNHCR and other humanitarian partners to raise awareness of and conduct training on the prevention of military recruitment among refugee populations.

States, the United Nations Children's Fund (UNICEF) and other actors, including UNHCR, where appropriate, to set up special programmes to disarm, demobilize and reintegrate child soldiers who are among refugee populations, equally benefiting and addressing the particular situation of male and female child soldiers."

Guidelines

A UNHCR Handbook for the Military on Humanitarian Operations, UNHCR Geneva, 1995
The Civilian Character of Asylum: Separating Armed elements from Refugees, EC/GC/01/5, 2001

Prevention of and Response to Sexual and Gender Based Violence

Agenda for Protection

Goal 4, Capt. 4

Prevention of age-based and sexual and gender-based violence

"UNHCR to work with States and humanitarian partners to ensure the full implementation of its Guidelines on the Protection of Refugee Women (Geneva, 1991), and on Sexual Violence against Refugee Women: Guidelines on the Prevention and Response (Geneva, 1995 – under revision), as well as the High Commissioner's Commitments to Refugee Women (12 December 2001) and the Policy on Protection from Sexual Exploitation, which is being developed by the Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation.

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

UNHCR and its partners to set in place a clear accountability structure for the protection of refugee women and refugee children from age-based and sexual and gender-based violence and ensure that applicable codes of conduct are respected in all humanitarian operations.

States to provide appropriate legal and rehabilitative remedies and to follow-up on the Yokohama Global Commitment.

States, UNHCR and other humanitarian partners to conduct training and capacity-building on the rights and needs of survivors of sexual exploitation, violence and abuse."

Guidelines

Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response, UNHCR Geneva, 2003
Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations, Inter-Agency Lessons Learned Conference Proceedings, Geneva, March 2001
Refugee Women, EC/GC/02/8, UNHCR Geneva, April 2002
UNHCR Guidelines on the Protection of Refugee Women, Geneva, July 1991

Protection of Children from Abuse and Exploitation**CRC****Article 37**

"States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action."*

African Charter on the Rights and Welfare of the Child**Article 16****Protection against Child Abuse and Torture**

- "1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.*
- 2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect."*

Agenda for Protection, Goal 4, Addressing Security-related Concerns More Effectively**Guidelines**

Inter-Agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, Geneva, 2004
Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UNHCR Geneva, 1997
Refugee Children – Guidelines on Protection and Care, Geneva, 2002
Refugee Children, EC/GC/02/9, April 2002

6. PROTECTED STATUS IS LEGALLY RECOGNIZED

Protected Status of Refugees and Asylum-Seekers is Recognized in Law

Banjul Charter

Article 5

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”

Agenda for Protection

Goal 1, Capt. 2

Improved individual asylum procedures

“States, through UNHCR’s Executive Committee (ExCom), to consider updating past ExCom guidance on the recommended framework for asylum procedures, with a view to promoting greater harmonization in the practice of States.

States to grant access to asylum procedures and to ensure that their asylum systems provide for effective and fair decision-making, done promptly and with enforceable results, including as regards the return and readmission of those found not to be in need of international protection. Return is important to counter misuse of asylum procedures and maintain the integrity of asylum systems.

States that have not yet done so to legislate for and set up asylum procedures, benefiting from UNHCR assistance and ExCom guidance. States with established asylum procedures to consider how best to support these initiatives, including with financial and technical assistance where necessary, as a tangible form of international cooperation.”

Guidelines

Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR Geneva, 1992

Documents Confirming Protected Status and Civil Status

1951 Refugee Convention

Article 25

Administrative Assistance

“2. The authority [...] shall deliver or cause to be delivered under their supervision to refugees such documents or certificates as would normally be delivered to aliens by or through their national authorities.

3. Documents or certificates so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.”

Article 27

Identity Papers

“The contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.”

Agenda for Protection

Goal 1, Capt. 11

Better registration and documentation of refugees.

“In keeping with the Conclusion on Registration of Refugees and Asylum-Seekers (No. 91 (LII) (2001)), and bearing in mind confidentiality requirements regarding the use of data, States to register and document female and male refugees and asylum-seekers on their territory on an individual basis as quickly as possible upon their arrival, in a manner which contributes to improving their security, their access to essential services and their freedom of movement.”

“States to provide necessary documents relating to civil status (e.g. birth, marriage, divorce, death), benefiting from the support and cooperation of UNHCR, where appropriate.”

7. FREE MOVEMENT

Restrictions on Mobility Are Limited to Those Necessary to Protect the Security of Refugees and / or National Security

1951 Refugee Convention

Article 26

Freedom of Movement

"Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances"

Banjul Charter

Article 12

"1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality."

ICCPR

Article 12

"1. Everyone lawfully within the territory of a State shall, within that territory, has the right to liberty of movement and freedom to choose his residence."

UDHR

Article 13

"(1) Everyone has the right to freedom of movement and residence within the borders of each state"

The Right not to be Arbitrarily Arrested and / or Detained Is Respected

1951 Refugee Convention

Article 16

Access to Courts

"1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from cautio judicatem solvi.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence."

ICCPR

Article 9

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. ..."

ExCom Conclusion on Detention of Refugees and Asylum-Seekers, No. 44 - 1986

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

(c) Recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention;

[...]

(e) Recommended that detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review;

(f) Stressed that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum-seekers shall, whenever possible, not be accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered;

(g) *Recommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies;*"

Guidelines

UNHCR Revised Guidelines on the Detention for Asylum-Seekers, 26. February 1999,

UNHCR/IOM/22/99/Rev.1; UNHCR/FOM/22/99/Rev.1

Detention of Asylum-Seekers and Refugees: The Framework, the Problem, and Recommended Practice, 4 June 1999, U.N. Doc.EC/49/SC/CRP.13

Recognized Refugees are Issued Travel Documents

1951 Refugee Convention

Article 28

Travel Documents

"1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article."

Executive Committee Conclusion on Travel Documents for Refugees, No. 13 - 1978

"The Executive Committee

[]

(b) Urged all States parties to the 1951 Convention and/or the 1967 Protocol to issue to all refugees, lawfully staying in their territory and who wish to travel, travel documents as provided for in the 1951 Convention (article 28, schedule and annex);

(c) Recommended that such Convention Travel Documents should have a wide validity, both geographically and in time, and should contain – as provided for in paragraph 13 or the schedule – a return clause with the same period of validity, in the absence of very special circumstances, as that of the travel document itself;

(d) Recommended that in order to avoid unnecessary hardship a refugee requesting an extension of validity or renewal of his Convention Travel Document should not be required to return to the issuing country for that purpose and should be enabled to secure such extension of validity or renewal of the Convention Travel Document, also for periods beyond six months, by or through the diplomatic or consular representatives of the issuing State; []

(f) Expressed the hope that bilateral and multilateral arrangements, concluded with a view to facilitating travel by their nationals, e.g. as regard the simplification of visa formalities or the abolition of visa fees, be extended by Contracting States also to refugees lawfully residing in their respective territory;"

8. ASSISTANCE IN MEETING PROTECTION NEEDS

Adequate Food, Water and Clothing

1951 Refugee Convention

Article 23

Public Relief

"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."

UDHR

Article 25

"(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

ICESCR

Article 11(1)

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

Guidelines

UNHCR Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations, Geneva, January 2004

UN Millennium Development Goals, 7. Ensure environmental sustainability

Immediate Shelter and Longer Term Housing Needs

1951 Refugee Convention

Article 21

Housing

"As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances."

ICESCR

Article 11(1)

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

UDHR

Article 25(1)

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

CEDAW

Article 14 (2)(h)

"States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

[...]

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

CRC**Article 27(3)**

"States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

[...]

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing."

Access to Primary Curative and Preventative Health Care**1951 Refugee Convention****Article 23****Public Relief**

"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."

Banjul Charter**Article 16**

*"1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick"*

UDHR**Article 25**

"(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

ICESCR**Article 11(1)**

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

Guidelines

UN Millennium Development Goals, 4. Reduce child mortality, 5. Improve maternal health, 6. Combat HIV/AIDS, malaria and other diseases

Education for Children**1951 Refugee Convention****Article 22****Public Education**

"The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education."

Banjul Charter**Article 17(1)**

"1. Every individual shall have the right to education."

African Charter on the Rights and Welfare of the Child**Article 11**

*"1. Every child shall have the right to an education.
2. The education of the child shall be directed to:
(a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;*

- (c) the preservation and strengthening of positive African morals, traditional values and cultures;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
- (e) the preservation of national independence and territorial integrity;
- (f) the promotion and achievements of African Unity and Solidarity;
- (g) the development of respect for the environment and natural resources;
- (h) the promotion of the child's understanding of primary health care."

UDHR

Article 26

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed at the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nationals, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children."

ICESCR

Article 13

"1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- a. Primary education shall be compulsory and available free to all;*
- b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
- c. Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
- d. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
- e. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved."*

CRC

Article 28

"1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a. Make primary education compulsory and available free to all;*
- b. Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
- c. Make higher education accessible to all on the basis of capacity by every appropriate means;*
- d. Make educational and vocational information and guidance available and accessible to all children;*
- e. Take measures to encourage regular attendance at schools and the reduction of drop/out rates;*

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries."

CEDAW**Article 10**

“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women :

The same conditions for career and vocational guidance...

Access to the same curricula, the same examination, teaching staff...

The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education...

The same opportunity to benefit from scholarships and other study grants...

The reduction of female students’ dropout rates...

The same opportunities to participate actively in sports and physical education...”

Agenda for Protection**Goal 6, Capt. 2****2. Measures to improve the framework for the protection of refugee children**

“States to accord importance to primary and secondary education for refugees, including by providing funding to host States and UNHCR, in recognition that education is an important tool of protection.”

Guidelines

Inter-Agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, Geneva, 2004

Action for the Rights of Children, Resource Pack, Critical Issues, 2001

UN Millennium Development Goals, 2. Achieve universal primary education and 3. Promote gender equality and empower women

9. EQUAL PROTECTION AND BENEFIT OF THE LAW

Access to Effective Remedies in Law and Fair and Public Hearings without Discrimination

1951 Refugee Convention

Article 16

Right of Access to Courts

- “1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.”

UDHR

Article 10

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.”

Banjul Charter

Article 3

- “1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.”

Article 7

- “1. Every individual shall have the right to have his cause heard. This comprises:
- a. the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - b. the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - c. the right to defence, including the right to be defended by counsel of his choice;
 - d. the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.”

ICCPR

Article 26

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all person equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 14

“(1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

[...]

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

To have adequate time and facilities for the preparation of this defense and to communicate with counsel of his own choosing;

To be tried without undue delay;

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) [...]

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; [...]



CEDAW

Article 2

“(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”

Guidelines

Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR Geneva, 1992

10. ABILITY TO ACHIEVE SELF-RELIANCE AND TO CONTRIBUTE TO THE HOST COUNTRY

Educational and Vocational Programmes Are in Place that Benefit Women and Men Equitably

1951 Refugee Convention

Article 22

Public Education

"2. The Contracting States shall accord to refugees treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships."

UDHR

Article 26

"[...] Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

ICESCR

Article 6 (2)

*"1. The States Parties to the present Covenant recognize the right to work [...]
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."*

Agenda for Protection

Goal 3, Capt. 1

Better responsibility-sharing arrangements to shoulder the burdens of first asylum countries

"States to explore with intergovernmental organizations and the private sector how to better resource trust funds (e.g. Refugee Education Trust) or scholarship schemes (e.g. Albert Einstein Academic Scholarship Programme for Refugees) which expand secondary, vocational and tertiary education opportunities for refugees, especially adolescents."

Goal 3, Capt. 2

More effective cooperation to strengthen protection capacities in refugee-receiving countries

"States to target financial and technical assistance in a manner that boosts the capacity of countries of first asylum to meet basic protection needs and to provide essential services, including education, as well as vocational training."

Guidelines

UN Millennium Development Goals, 3. Promote gender equality and empower women

Access to Wage Earning and Self-Employment

1951 Refugee Convention

Article 17

Wage-earning employment

"1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He has completed three years' residence in the country;*
- (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;*
- (c) He has one or more children possessing the nationality of the country of residence.*

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who

have entered their territory pursuant to programmes of labour recruitment or under immigration schemes."

Banjul Charter

Article 15

"Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

ICESCR

Article 6

"1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

Agenda for Protection

Goal 5, Capt. 7

Achievement of self-reliance for refugees

UNHCR and States to ensure that, from the outset, assistance programmes for refugees integrate strategies for self-reliance and empowerment. In this regard, UNHCR to act as a catalyst in mobilizing financial and technical support for such measures...

States to consider expanding possibilities for education, vocational training, and agricultural and other income-generating programmes, benefiting men and women equitably.

States, UNHCR and humanitarian partners to ensure that refugees, particularly refugee women and adolescents, and host communities themselves, participate in the design and development of self-reliance programmes.

States, UNHCR and humanitarian and development partners to work with host countries on further developing integrated approaches that can strengthen the absorption capacity of refugee-hosting areas.

UNHCR to initiate a study of economic and social conditions for refugees in host States, with emphasis on national employment legislation, as well as an inventory of best practices for self-reliance strategies, to provide States with practical operational tools to turn principles into concrete measures .

Guidelines

Local Integration, EC/GC/02/6, 2002

UN Millennium Development Goals, 1. Reduce extreme poverty and hunger

Social Security and Protection Governing Just and Favourable Conditions of Work Are Provided without Discrimination

1951 Refugee Convention

Article 24

Labor Legislation and Social Security

"1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national law or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States."

UDHR

Article 22

"Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

ICESCR

Article 7

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

(a) Remuneration []

(b) Safe and healthy work conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

Article 9

"The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

The Right to Own Property

1951 Refugee Convention

Article 13

Movable and Immovable Property

"The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property."

Banjul Charter

Article 14

"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

UDHR

Article 17

"1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property."

11. OPPORTUNITIES FOR DURABLE SOLUTIONS ARE ACTIVELY ENGAGED

Voluntary Repatriation

UNHCR Statute

Article 8

"(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities"

Article 9

"The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal."

ExCom Conclusion, No. 89 (LI) - 2000

"Recognizing the need for Governments, UNHCR and the international community to continue to respond to the asylum and assistance needs of refugees until durable solutions are found; and while noting that voluntary repatriation, local integration and resettlement are the traditional durable solutions for refugees, affirming that voluntary repatriation is the preferred solution, when feasible"

Agenda for Protection

Goal 5, Capt. 2

Improved conditions for voluntary repatriation

Countries of origin, working in cooperation with UNHCR and relevant partners, including OHCHR, to commit themselves to respecting the right to return and receiving back their refugees within an acceptable framework of physical, legal and material safety, achievable, for example, through amnesties, human rights guarantees, and measures to enable the restitution of property, all of which should be appropriately communicated to refugees.

In this regard also, countries of origin to explore more actively initiatives in the socio-economic, cultural and political spheres, to foster reconciliation and dialogue, particularly with refugee communities, and to ensure respect for the rule of law.

States to put in place more coherent and comprehensive support to countries of origin, to assist them to discharge their responsibility to ensure the legal, physical and material security of refugees.

States to facilitate the participation of refugees, including women, in peace and reconciliation processes and to ensure that such agreements duly recognize the right to return and contemplate measures to encourage repatriation, reintegration and reconciliation.

Countries of origin and asylum, working in cooperation with UNHCR, to promote voluntary repatriation inter alia through the conclusion of tripartite agreements and measures facilitating decisions on return, such as "go-and-see visits", information sessions involving exchanges between refugees and home-country officials, and similar confidence-building measures, as well as, resources permitting, enhanced UNHCR field presence to allow continuous monitoring and to contribute to the creation of normal and peaceful conditions to facilitate repatriation...

States and UNHCR to ensure that both women and men are given an opportunity to make a free and fully informed decision regarding return and to sign individually the Voluntary Repatriation Form, fully respecting the need for confidentiality.

Guidelines

UNHCR Handbook on Voluntary Repatriation: International Protection, UNHCR Geneva, 1996

Local Integration

1951 Refugee Convention

Article 34

Naturalization

"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

UNHCR Statute**Article 2**

"Calls upon Governments to co-operate with the United Nations High Commissioner for Refugees in the performance of his functions concerning refugees falling under the competence of his Office, especially by: [...]

(e) Promoting the assimilation of refugees, especially by facilitating their naturalization."

Article 8

"(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities"

Agenda for Protection**Goal 5, Capt. 4**

Local integration having its proper place as a part of a comprehensive strategy for durable solutions

"ExCom to set out framework considerations for implementing the solution of local integration, in the form of a Conclusion sensitive to the specificities of refugee needs, international and national legal standards, as well as the socio-economic realities of hosting countries. In this regard, a gender and age-sensitive community-development approach to local integration to be promoted, taking into account, as possible and appropriate, needs of both the refugees and the local population.

States to examine where, when and how to promote the grant of a secure legal status and residence rights, which could include the opportunity to become naturalized citizens of the country of asylum, for refugees who have already attained a considerable degree of socio-economic integration.

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

Guidelines

UNHCR Handbook on Integration Rights (Draft), UNHCR Geneva, February 2004

Resettlement Functions as a Tool of Protection and Solutions**Agenda for Protection****Goal 3, Capt. 6**

Resettlement Used more Effectively as a Tool of Burden-Sharing

"States to examine how more flexible resettlement criteria could be applied with regard to refugees recognized on a prima facie basis in mass displacement situations to whom Article 1 F does not apply, coupled with, as appropriate, temporary humanitarian evacuation programmes.

The Working Group on Resettlement to examine further the potential use of resettlement as a burden-sharing tool, which would include the issue of criteria to be applied in mass displacement situations, especially where the prospect of other durable solutions is remote or absent.

States and UNHCR to examine ways in which resettlement capacities can be enhanced, e.g. through increased partnerships with NGOs and other relevant partners."

Goal 5, Objective 6

More efficient use of resettlement both as a protection tool and as a durable solution

Guidelines

Strengthening and Expanding Resettlement Today: Dilemmas, Challenges and Opportunities, EC/GC/02/7, April 2002

The Pursuit of All Durable Solutions Is a Coherent and a Comprehensive Approach Is Engaged**Agenda for Protection****Goal 5, Capt. 1**

Realization of comprehensive durable solutions strategies, especially for protracted refugee situations

"UNHCR to undertake a review of all protracted refugee situations, with a view to exploring with States and other partners the feasibility of comprehensive plans of action, bringing into play each of the



available durable solutions, to be implemented in close consultation with countries of origin, host countries, resettlement countries, and refugees themselves.

The Working Group on Resettlement to explore how strengthening capacity in host countries affects the pursuit of one or other available durable solution(s), as well as a more strategic use of resettlement, including within regions affected by refugee movements.”