25 years in Armenia

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

UNHCR comments on the Draft Law of the Republic of Armenia on Making Amendments and Supplements to the Law of the Republic of Armenia on Refugees and Asylum

Introduction

On 17 April 2018, the State Migration Service of the Ministry of Territorial Administration and Development of Armenia circulated a draft Law on Making Amendments and Supplements to the Law of the Republic of Armenia on Refugees and Asylum (hereafter "the Draft"). The draft was shared with UNHCR on 8 May 2018.

UNHCR offers these comments on the Draft as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees. As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, *"[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."* UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees ("the 1951 Refugee Convention") according to which State parties undertake to *"co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention"*. The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol").

Thus, UNHCR comments and request for further consultations on legislative changes falling under its mandate are based on these international commitments. UNHCR also notes the requirement of Article 81(1) of the Constitution of the Republic of Armenia (the Constitution) to take into account the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution.

General remarks

UNHCR welcomes the continuous efforts of the Government of the Republic of Armenia to bring the asylum legislation into line with international law and standards. UNHCR commends the important legislative initiative to supplement Article 24 of the Law on Refugees and Asylum (hereafter 'the Refugee Law') with a provision allowing payment of a rental subsidy to refugees which is an important factor contributing to their local integration.

However, UNHCR has concerns with respect to Articles 1 and 2 of the Draft which propose amendments to Articles 10 and 11 of the Refugee Law. On the basis of the

justifications below, UNHCR has assessed that the proposed amendments to Articles 10(1), 11(1) and 11(2) of the Refugee Law, as they currently stand, are incompatible with the provisions of the 1951 Refugee Convention and would, if adopted and applied, result in decisions at variance with international legal obligations undertaken by the Republic of Armenia. Moreover, UNHCR believes that these amendments are not necessary as the existing legislation contains provisions enabling the authorities of the Republic of Armenia to address situations where a refugee poses a threat to national security, which had proven fully sufficient – UNHCR is not aware of any case during the recent years in which the existing legislation had resulted in security gaps.

Therefore, UNHCR recommends to withdraw the proposed amendments to Articles 10(1), 11(1) and 11(2) of the Refugee Law.

Specific observations

1. **The proposed paragraph 4 to be introduced under Article 11(1)**

The proposed amendment to Article 11(1) of the Refugee Law which sets out the *"grounds for exclusion from refugee status"* reads as follows:

'1.A foreign national or a stateless person shall not be granted refugee status, if there are serious reasons to believe that he/she:
[…]
(4) *poses possible danger to the national security of the Republic of Armenia, based on the conclusion of the authorized body for national security issues.'*

UNHCR is concerned that the proposed supplement to Article 11(1) of the Refugee Law would introduce substantive modifications to the exclusion clauses in the Refugee Law, up to now in conformity with the 1951 Refugee Convention. The 1951 Refugee Convention exhaustively enumerates in its Article 1D(1), 1E and 1F the grounds for exclusion from refugee status, and no other ground may be added to justify the denial of refugee status to a person who otherwise meets the definitional requirements of the 1951 Refugee Convention.

The proposed amendment under Article 11(1) of the Refugee Law is juxtaposing the provisions of Articles 32 (expulsion of refugees lawfully in the host State's territory, albeit only to a country where the person would not be at risk of persecution) and 33(2) (exceptions to the *non-refoulement* principle) with the exclusion clauses of Article 1F (denial of refugee status based on a person's involvement in serious crimes or heinous acts) of the 1951 Refugee Convention. However, under the 1951 Refugee Convention, exclusion from refugee status under Article 1F and expulsion/return based on the exceptions to the *non-refoulement* principle serve different purposes and are two different processes.

The rationale of exclusion under Article 1F of the 1951 Refugee Convention, which is appropriately incorporated into the Refugee Law under Article 11(1), is twofold. Firstly, certain acts are so grave that they render their perpetrators undeserving of

international protection. Secondly, the refugee framework should not prevent serious criminals from facing justice. By contrast, expulsion or return to the country of origin of a *recognized refugee* aims at protecting the safety of the country of refuge and hinges on the appreciation of a present or future threat.[1] Article 33(2) of the 1951 Refugee Convention, which allows for exceptions to the principle of *non-refoulement* in certain circumstances, is already correctly and effectively incorporated in the Refugee Law under Article 9(1) para 2 as well as, indirectly, under Article 10(3).

UNHCR appreciates that in the justifications of the Draft, a reference is made to Article 14 of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 *on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted* (hereafter 'the 2011 Qualification Directive').[2] However, as explained below, the 2011 Qualification Directive does not justify the approach taken in the Draft.

UNHCR wishes to highlight that the 1951 Refugee Convention and its 1967 Protocol are the cornerstone of the international system for the protection of refugees. This has been reaffirmed under Article 78 of the Treaty on the Functioning of the European Union[3] which provides that the common policy of the Union in the area of asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Refugee Convention and its 1967 Protocol. Article 14(4) and (5) of the 2011 Qualification Directive refer to "*status granted to a refugee*" and UNHCR has recommended that the word *"status"* in Article 14 (5) -- which provides that Member States may decide not to grant status to a refugee on national security grounds -- should be understood by Member States to refer to the protection extended by the state, rather than to refugee status in the sense of Article 1A (2) of the 1951 Refugee Convention, as noted by UNHCR.[4] The Advocate General of the Court of Justice of the European Union reached similar conclusions in his Opinion on three cases referred to the Court for a preliminary ruling *inter alia* on the question of whether Article 14 (4), (5) and (6) of the Qualification Directive are consistent with the 1951 Refugee Convention. Based on an analysis of these provisions in light of relevant EU law as well as the provisions of the 1951 Refugee Convention, the Advocate General concluded that Article 14(4) and (5) of the Qualification Directive do not provide for additional exclusion or cessation grounds; rather, their application means that the person concerned remains a refugee, however, he or she no longer benefits from

---

[1] UN High Commissioner for Refugees (UNHCR), *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* (OJ L 304/12 of 30.9.2004), 28 January 2005, pages 30-31, available at: http://www.refworld.org/docid/4200d8354.html.

[2] European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0095; and http://www.refworld.org/docid/4f197df02.html

[3] European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ L. 326/47-326/390; 26.10.2012, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT,

[4] UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009), page 14, available at http://www.unhcr.org/4c5037f99.pdf.

protection against *refoulement*, and the host State may withdraw those rights and benefits which, under the 1951 Refugee Convention, are conditional upon the person lawfully staying or residing on its territory.[5]

UNHCR strongly recommends to withdraw the proposed amendment to Article 11(1) of the Refugee Law.

2. The proposed supplement to Article 11(2) of the Refugee Law

The proposed amendment under Article 11(2) of the Refugee Law reads as follows: '*The grant of asylum shall be denied if, on the basis of the conclusion of the authorized body on national security issues, the asylum-seeker poses a possible danger to the national security of the Republic of Armenia'*.

While in view of Articles 32 and 33(2) of the 1951 Refugee Convention denial of asylum and the expulsion of a refugee with respect to whom reasonable grounds exist to believe that he/she poses a threat to the security of the country of asylum would be permitted if the relevant criteria are met, UNHCR has two main concerns with respect to the proposed amendment to Article 11(2).

Firstly, under Article 33(2) of the 1951 Refugee Convention -- which provides for an exception to the principle of *non-refoulement* -- refers to a refugee whom there are *'reasonable grounds for regarding as a **danger** to the security of the country in which he is', while the proposed provision refers to a '**possible danger'***. The term *'possible danger'* is general and could be susceptible to subjective and/or arbitrary interpretation and runs the risk of lowering the required threshold, in terms of the seriousness of the danger to the security of the country, which would justify the application of an exception to the principle of *non-refoulement*.

It is a general principle of law that exceptions to international human rights treaties must be interpreted restrictively.[6] Article 33(2) of the 1951 Refugee Convention *"constitutes an exception to the general principle embodied in paragraph 1 and has, like all exceptions, to be interpreted restrictively. Not every reason of national security may be invoked […]*"[7] Thus, while states clearly maintain a margin of discretion in applying the exceptions to Article 33(1) of the 1951 Refugee Convention, this margin of appreciation is not unlimited.[8]

The fundamental character of the prohibition of *refoulement* and the humanitarian character of the 1951 Refugee Convention more generally must be taken as establishing a high threshold for the operation of exceptions to the 1951 Refugee

---

[5] Advocate General's *Opinion in Joined Cases C-391/16 M v Ministerstvo vnitra, C-77/17 and C-78/17 X v Commissaire général aux réfugiés et aux apatrides*, 21 June 2018. Available in French: http://curia.europa.eu/juris/document/document.jsf?text=&docid=203230&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=991198; the English press release: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-06/cp180089en.pdf

[6] ECtHR, *Klass v. Germany,* at para. 42 (1978); ECtHR, *Winterwerp v. The Netherlands,* at para. 37 (1979).

[7] Paul Weis, *The Refugee Convention, 1951*: *The Travaux préparatoires Anlyzed with Commentary by Dr. paul Weis,* at 342 (Cambridge University Press, 1995).
See also Sir Elihu Lauterpacht and Daniel Bethlehem, *Cambridge University Press, The Scope and Content of the Principle of Non-Refoulement: Opinion,* June 2003, available at: http://www.refworld.org/docid/470a33af0.html at para. 159(iii).

[8] See, Lauterpacht and Bethehem, at paras. 167-68.

Convention. This is particularly so given the serious consequences for the individual of *refoulement*. The danger to the security of the country in contemplation in Article 33(2) of the 1951 Refugee Convention must therefore be taken to be a very serious danger rather than danger of some lesser order.[9] The security of the country is invoked against acts of a rather serious nature endangering directly or indirectly the constitution, government, the territorial integrity, the independence, or the external peace of the country concerned.[10] Article 33(2) of the 1951 Refugee Convention covers conduct such as attempts to overthrow the government of the host State through violence or otherwise illegal means, activities against another State which may result in reprisals against the host State, acts of terror and espionage, and the requirement of a danger to the security of the country can only mean that the refugee must pose a ***serious danger*** to the foundations or the very existence of the State, for his or her return to the country of persecution to be permissible.[11]

The proper interpretation and application of Article 33(2) of the 1951 Refugee Convention also requires an assessment of proportionality of an expulsion measure, which means that: (1) there must be a rational connection between the removal of the refugee and the elimination of the danger; (2) *refoulement* must be the last possible resort to eliminate the danger; and (3) the danger to the country of refuge must outweigh the risk to the refugee upon *refoulement*. It is UNHCR's understanding that the need for such a balancing approach is also supported by the principle of proportionality explicitly enshrined under Article 78 of the Constitution.[12]

Secondly, while Article 33(2) of the 1951 Refugee Convention sets the standard of proof as *'reasonable grounds for regarding as a danger'*, the proposed provision to be introduced under Article 11(2) refers to the *'conclusion of the authorized body on national security issues'*. UNHCR believes that under the current legislation and practice in Armenia, whereby the decision making authority on refugee status determination and grant of asylum is the Migration Service of the Ministry of Territorial Administration and Development of Armenia, a provision whereby the conclusion of the authorised body for national security issues would in and of itself be sufficient for the application of an exception to the principle of *non-refoulement* by the Migration Service, or reliance on the conclusion would be mandatory, runs a number of risks, including, but not limited, to the following:

- Mere reliance on the conclusion of the National Security Service of the Republic of Armenia (NSS) would not provide the Migration Service with the scope to properly address all aspects of the proportionality considerations as explained above, given that the NSS, by virtue of its responsibilities, does not look into the form, nature and severity of the persecution which the refugee would face if returned to the country of origin; this, however, is a key factor which would have to inform any proportionality test.

---

[9] See, Lauterpacht and Bethlehem, at para. 169.

[10] Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951: Article 2-11, 13-37,* at 236 (manuscript, 1963, published by UNHCR, 1997).

[11] Walter Kälin, *Das Prinzip des Non-refoulement,* Europäische Hochschulschriften Bd./Vol. 298, at 131 (Bern, Frankfurt am Main: Peter Lang, 1982) (unofficial translation from the German original).

[12] According to Article 78 of the Constitution of Armenia, "[t]he means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective prescribed by the Constitution. The means chosen for restriction must be commensurate to the significance of the basic right or freedom being restricted."

- In the absence of a clear indication of the requisite standard of proof, *i.e. 'reasonable grounds for regarding as a danger'*, the proposed regulation runs the risk of lowering such standard. It should be noted that a finding of dangerousness can only be *"reasonable"* if it is adequately supported by reliable and credible evidence. The decision-maker must specifically address the question of whether there is a future risk, and the conclusion on the matter must be supported by evidence.
- There is a risk that decisions on whether a person poses a danger to national security may be taken in proceedings where the concerned persons are not entitled to see all evidence against them or to effectively respond to the accusations against them, which increases the possibility of abusing of this provision in practice. In this regard, UNHCR recalls that the application of Article 33(2) of the 1951 Refugee Convention requires an individualized procedure which offers, as a minimum, the guarantees provided for in Article 32(2) and (3) of the 1951 Refugee Convention.

With respect to the latter point, UNHCR notes the requirements of the Constitution and legislation of Armenia for proper administrative action and the right to be heard,[13] as well as the relevant jurisprudence of the Court of Cassation of Armenia.[14] Nevertheless, UNHCR has observed instances when the so called conclusions of the NSS, which contained no factual data or substantiation whatsoever, have been taken as a basis to withdraw asylum from a refugee. In such cases, the applicants and his/her representative/lawyer were lacking a chance to challenge the validity, correctness or relevance of the underlying information. Such information has not in fact been disclosed to the authorized body for asylum either and has been expressly withheld from the Administrative Court on the basis of Article 41 of the Law on Operative Investigative Activities. UNHCR wishes to highlight that a statement that a person is a threat to the national security without any additonal explanation will generally serve as a trigger for a thorough examination as to the possible applicability of the exception to *non-refoulement*; however, it will not be sufficient as such to justify its application.

Having acknowledged the legitimate interest of the States to address national security considerations, UNHCR has stressed on a number of occasions the need to strike a fair balance between the interests of the State and the individual when it comes to disclosure of sensitive information. Where there are concerns that disclosure of information to the refugee may pose a threat to the security of the country of asylum or of individuals, a summary statement of the information which would not be injurious to national security or to the safety of persons shall be provided to the refugee to enable him/her to be reasonably informed of the circumstances giving rise to the issue of application of the exception to the principle of *non-refoulement* and to provide the person with a reasonable opportunity to be heard. The need to balance the State interests with the procedural safeguards for individuals in the context of national

[13] Article 50 of the Constitution of Armenia; Article 38 of the Law on Fundamentals of Administrative Action and Administrative Proceedings.
[14] See, for example, decision of the Court of Cassation of the Republic of Armenia in the administrative case No. ՎԴ/0016/05/08.

security considerations has been highlighted by the European Court of Human Rights in its jurisprudence on numerous occasions.[15]

UNHCR notes that several mechanisms have been introduced in State legislation and practice to address the issue of disclosure of sensitive information, including the system of *'special advocates'* in Canada and the UK which may serve as helpful examples of international practice to study.[16]

Moreover, UNHCR wishes to further note that the exceptions to the principle of *non-refoulement* have already been incorporated into the Refugee Law during the 2015 amendments cycle under paragraph 2 of Article 9(1), read in conjunction with Article 2(1). Thus, it is UNHCR's understanding that in order to give effect to paragraph 2 of Article 9(1) of the Refugee Law so that to deny asylum to a refugee whom there are reasonable grounds to regard as a danger to the national security, a mere reference under Article 11 to paragraph 2 of Article 9(1) would be sufficient. This would also ensure that both the Refugee Law properly reflects both the *"danger to the security"* and the *"danger to the community"* exception provided for under Article 33(2) of the 1951 Refugee Convention.

UNHCR recommends to:

- **Withdraw the proposed amendment to Article 11(2) of the Refugee Law considering the incompatibility of the current formulation with the requirements of the 1951 Refugee Convention and ample preparations and consultations needed in order to introduce appropriate measures ensuring the minimum procedural safeguards required by Article 32(2) and (3) of the 1951 Refugee Convention as well as by the relevant provisions of the European Convention on Human Rights, as reflected in the jurisprudence of the European Court of Human Rights.**

---

[15] See, for example, *Chahal vs. the UK*, *Application no. 22414/93*, para. 131 which states: 'The Court recognises that the use of confidential material may be unavoidable where national security is at stake. This does not mean, however, that the national authorities can be free from effective control by the domestic courts whenever they choose to assert that national security and terrorism are involved (see, mutatis mutandis, the Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 17, para. 34, and the Murray v. the United Kingdom judgment of 28 October 1994, Series A no. 300-A, p. 27, para. 58). The Court attaches significance to the fact that, as the intervenors pointed out in connection with Article 13 (art. 13) (see paragraph 144 below), in Canada a more effective form of judicial control has been developed in cases of this type. This example illustrates that there are techniques which can be employed which both accommodate legitimate security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice.'

See also *Ljatifi v. the Former Yugoslav Republic of Macedonia, Application no.* 19017/16, para. 35 which states: '[…] even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that deportation measures affecting fundamental human rights be subject to some form of adversarial proceedings before an independent authority or a court competent to effectively scrutinise the reasons for them and review the relevant evidence, if need be with appropriate procedural limitations on the use of classified information. The individual must be able to challenge the executive's assertion that national security is at stake. While the executive's assessment of what poses a threat to national security will naturally be of significant weight, the independent authority or court must be able to react in cases where the invocation of this concept has no reasonable basis in the facts or reveals an interpretation of "national security" that is unlawful or contrary to common sense and arbitrary […]'.

See also *A. and Others v. the UK,* 19 February 2009, no. 3455/05, §204; *C.G. and Others v. Bulgaria*, 24 April 2008, no. 1365/07, §57

[16] The role of the Special Advocate has developed in proceedings before a wide variety of forums, both statutory and non-statutory in origin, where a party, with the permission of the forum, seeks to rely upon 'closed' evidence. Closed evidence may raise issues concerning national security. Individuals and their legal representatives are excluded from hearings where closed evidence is used. Special Advocates perform an important role by representing the interests of the excluded party in those hearings and subjecting the sensitive material to scrutiny, thereby promoting the fairness of the proceedings.

See, for example, UK Parliament, Select Committee on Constitutional Affairs, Seventh Report, *The Special Advocate system as operated under SIAC*, available at https://publications.parliament.uk/pa/cm200405/cmselect/cmconst/323/32307.htm

- **Undertake a comprehensive review of the legislation on disclosure of sensitive information (State or official secrets) involving broad consultations with all stakeholders, including the legal community, to introduce relevant amendments to the Refugee Law as well as other relevant legislative acts that would enable a refugee or his/her representative to be reasonably informed of the circumstances giving rise to the issue of application of an exception to the principle of *non-refoulement,* including through withdrawal or denial of protection under existing Article 10(3) or a possible future amendment to Article 11 of the Refugee Law, and to provide him/her with a reasonable opportunity to be heard.**

- **Supplement Article 11 of the Refugee Law with a reference to paragraph 2 of Article 9(1) as a ground for denial of asylum, conditional upon incorporation in the legislation of appropriate procedural safeguards as provided for under Article 32(2) and (3) of the 1951 Refugee Convention as well as relevant provisions of the European Convention on Human Rights, as reflected in the jurisprudence of the European Court of Human Rights, should the introduction of an explicit ground for denial of asylum still be considered appropriate by the authors of the Draft.**

3. The proposed paragraph 8 to be introduced under Article 10(1) of the Refugee Law

The proposed amendment to Article 10(1) of the Refugee Law which sets out the grounds for ceasing refugee status reads as follows:

‘ 1. The refugee status of a person shall be ceased, if he/she:

[…]

(8) poses possible danger to the national security of the Republic of Armenia based on the conclusion of the authorized body for national security issues”.

UNHCR is concerned that the proposed provision under Article 10 of the Refugee Law runs the risk of introducing substantive modifications to the cessation clauses provided in Article 1C of the 1951 Refugee Convention which enumerates in the grounds for cessation of refugee status exhaustively, and no other ground may be adduced by way of analogy to justify cessation of refugee status.

UNHCR strongly recommends to withdraw the proposed amendment to Article 10(1) of the Refugee Law.

UNHCR recommendations for additional amendments to the Refugee Law:

UNHCR notes with regret that the Draft does not incorporate a number of UNHCR recommendations for amendments to the Refugee Law as provided to the Government of Armenia in UNHCR Comments on the Draft Amendments to the Law on Refugees and Asylum dated December 2014 (2014 UNHCR comments) which are hereby

enclosed for ease of reference. UNHCR thus recommends to use this opportunity to address the other remaining gaps in the Refugee Law and to bring it further in line with international law and standards.

UNHCR urges the Government of Armenia to use the opportunity of this legislative initiative to address UNHCR's recommendations for legislative amendments as contained in UNHCR Comments on the Draft Amendments to the Law on Refugees and Asylum dated December 2014.

In addition to the recommendations contained in 2014 UNHCR Comments, UNHCR would like to propose below two more recommendations which derive from the experience of monitoring the application of the relevant provisions in practice more recently:

- **The role of State authorities to proactively identify potential asylum-seekers**

UNHCR has noted a certain degree of reluctance of State authorities listed under Article 13(2) of the Refugee Law who are authorized to accept and refer asylum claims to proactively identify persons who may be in need of international protection. Considering the crucial role of first contact officials – be them border officials, police or detention facilities staff – in facilitating the right to effective access to international protection and compliance with the principle of *non-refoulement* by proactively identifying those who may be in need of protection, UNHCR would recommend further strengthening the wording of Article 13(2) of the Refugee Law which provides for the obligation of the relevant authorities to provide information on the possibility to present an asylum claim in Armenia.

UNHCR recommends to revise the last sentence of Article 13(2) of the Refugee Law to include additional wording that the relevant authorities shall *ex officio* effectively and efficiently identify persons who may be in need of international protection, so as the provision reads as follows: "*These bodies shall also be obliged to identify persons who are possibly in need of international protection and to provide information to them on the opportunity to submit an asylum claim in the Republic of Armenia*."

- **The principle of confidentiality**

The principle of confidentiality in asylum procedures derives from international human rights law which guarantees everyone the right to privacy and protects individuals from arbitrary or unlawful interference. Confidentiality in asylum procedures is particularly important because of the vulnerable situation in which refugees and asylum-seekers find themselves. The right to privacy and its confidentiality requirements are especially important for an asylum-seeker, whose claim inherently supposes a fear of persecution by the authorities of the country of origin and whose situation can be jeopardized if protection of information is not ensured. It would be against the spirit of the 1951 Refugee Convention to share personal data or any other information relating to asylum-seekers with the authorities

of the country of origin until a final rejection of the asylum claim. Potential threats to the safety of an asylum-seeker's family members in the country of origin would also be an important consideration. As discussed during the Global Consultations on International Protection, "*the asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request*" and highlighted that "*no information on the asylum application should be shared with the country of origin*".[17]

UNHCR notes that the principle of confidentiality has found only limited reflection in the Refugee Law under its Article 51(9) which refers to confidentiality of information obtained in an interview with an asylum-seeker only. Having observed instances recently when information on an asylum request was shared with the authorities of the country of origin, UNHCR suggests to consider broadening the scope of the principle of confidentiality in the Refugee Law to provide for more comprehensive safeguards against any possible breach thereof.

UNHCR recommends introducing an amendment to the Refugee Law which would expressly specify that the confidentiality principle should be fully respected during all stages of the asylum procedure and by all relevant authorities, and that as a general rule no information concerning the asylum-seeker or the asylum application, including the fact that such an application has been submitted, should be shared with his/her country of origin.

UNHCR, July 2018

[17] UN High Commissioner for Refugees (UNHCR), *"Asylum Processes (Fair and Efficient Asylum Procedures)", Global Consultations on International Protection*, EC/GC/01/12, 31 May 2001, paragraph 50 (m). The document is a collection of best state practice, including national legislation, available at http://www.refworld.org/pdfid/3b36f2fca.pdf.