

MODULE 6

INDIVIDUAL ARRIVAL



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Summary

The purpose of this module is to raise participants' awareness of the protection concerns in situations of individual, as opposed to mass, arrival. It provides an overview of **the rights of asylum-seekers** when they arrive at the border and the elements of **a fair refugee status determination (RSD)** procedure.

Participants will learn that **the host state has responsibility for conducting individual RSD procedures**. They will see, however, that the **UNHCR** has often been the world's largest individual decision-maker in refugee situations and, at times, has been solely responsible for RSD in dozens of countries (even in those countries that are a party to the 1951 Refugee Convention).

The participants will identify the range of **protection issues** that arise for certain individuals, such as unaccompanied minors, women, children, and the elderly. They will also learn that certain asylum-seekers will not qualify for protection as refugees because they are *excludable*, that is, they have committed serious crimes against peace, war crimes, or acts contrary to the purposes of the United Nations.

Learning Objectives

By the end of the session, participants will be able to:

- Identify the key protection concerns of asylum-seekers who arrive individually;
- Identify standards for fair RSD procedures.

Key Messages

- The principle of *non-refoulement* means that, on arrival, asylum-seekers must not be turned away at the border or frontier;
- Asylum-seekers are extremely vulnerable at the time that they first cross a border and should have immediate access to assistance and advice in a language they understand;
- The RSD procedure must comply with international standards for a fair determination, including that decisions be made by an independent, competent (including gender-sensitive), and impartial decision-maker;
- Some asylum-seekers do not qualify for protection as Convention refugees because they have committed serious crimes or other acts. The basis for excluding them is strictly defined in the 1951 Refugee Convention.

Preparation

- **Review recent changes** to the standards and policies relating to individual asylum-seekers, as it is a fast-changing area. See, in particular, the **Convention Plus, Global Consultations**, and recent **EXCOM conclusions** noted in the bibliography;
- **Select and photocopy** the case study or studies that you will use in the session.

Module 6 Breakdown			
Timing		Method	Resources needed
Activity 1: Presentation on Individual Arrival	30'	Presentation in plenary	Module 6.ppt
Activity 2: Case Study	60'	Case studies	Handout 1 - Case Study: Arrival at the Airport Handout 2 - Case study: Asylum Application Handout 3 - Case Study: Illegal Border Crossing
Total: 90 minutes			

Sources

- *Reception of Asylum-seekers, Including Standards of Treatment in the Context of Individual Asylum Systems*, Global Consultations on International Protection, 4 September 2001, EC/GC/01/17;
- *Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum*, Office for the United Nations High Commissioner for Refugees, Geneva 1997;
- See, generally, the **UNHCR position papers** from the Global Consultation relating to Refugee Status Determination, including those on: Access to procedures, “Safe Third Countries” and “Time Limits”; Complementary forms of protection; Strengthening protection capacities in host countries; Local integration; Reception of asylum seekers; Protection of refugees in mass influx situations: overall protection framework.

Activity 1 - Presentation on Individual Arrival			
Timing		Method	Resources needed
Presentation	30'	Presentation in plenary	Module6.ppt
Total: 30 minutes			

Note to trainer

- ✓ Refer participants to “Individual arrival” in Protecting Refugees: A Field Guide for NGOs.
- ✓ The following notes after the slides provide background information for the trainer. The trainer should make a judgement about the level of information they give according to the experience in the group.

Slide 1: Individual arrival

Slide 2: Objectives

- Identify the key protection concerns of asylum-seekers who arrive individually;
- Identify standards for fair RSD procedures.

Slide 3: Admission to a country of asylum

It is important to **emphasise** that, while states have the right to control their border, they do not have the right to refuse entry – this would be considered *refoulement*.

Slide 4: Asylum-seekers

When a person enters another country and seeks refuge, they are known as an asylum-seeker. They have a right to an individual determination of their claim to asylum. This can lead to a declaration that they are a refugee.

Those individuals who have not yet been declared as refugees are in a vulnerable position. Often, nearly all asylum-seekers are in a vulnerable position and do not receive adequate assistance.

Some states try to severely limit the number of individual asylum-seekers who can gain access to their countries and to RSD procedures.

If an asylum-seeker presents himself/herself without delay to the national authorities to let them know they are on their territory to seek protection, then they cannot be subject to penalties for entering the country illegally. States have the obligation to set up RSD procedures, which can vary considerably from one country to another. Many countries do not yet have such procedures.

Some states say that, because a person did not come with a valid passport, or because they used a false passport, that they are *illegal*. It is almost impossible for asylum-seekers to leave their country, let alone gain access to another country, if they state their intentions to seek asylum.

States are not free to place **undue restrictions** on the movement of refugees, and any restrictions must be necessary, and usually only until such time as their status in the host country is regularised.

There have also been many documented cases of sexual exploitation at borders by officials and other forms of coercion. It is often the case that NGOs working in the area will be the first to become aware of this.

Slide 5: Asylum-seekers have rights

While an individual is having their asylum claim determined, they have basic rights and are always entitled to humane treatment. Some host countries do not allow asylum-seekers to work or allow them access to education, health care, or social assistance.

Some states and the media may play on the confusion in the public mind between refugees, asylum-seekers, and illegal migrants, and this has a direct impact on the protection that asylum-seekers enjoy.

Asylum-seekers must comply with the laws of the host country extending them international protection.

Refugees have a well-defined set of rights that states have agreed to. The sources of these rights are found in refugee law, human rights law, and international humanitarian law.

Slide 6: Who is responsible?

Normally, it is the **host government**, through its officials, that registers asylum-seekers, determines the validity of their claim to asylum, and issues any documentation to ensure that the legal status of the asylum-seeker or refugee is known.

In a number of countries, it is the **UNHCR** that takes full responsibility for determining asylum claims, and this can be a controversial role for them.

Sometimes, the UNHCR implements and oversees this process. There are examples of situations where NGOs have done so, too: NGOs may receive asylum-seekers who individually arrive at a camp, for example, and may register them and refer them to the UNHCR or the government. There are also cases of NGOs providing documentation, although this might not be an appropriate role for an NGO and will really depend on the local circumstances and whether taking up this role will compromise their ability to deliver on their other assistance and protection work.

Registration, RSD, and then documentation are the normal sequence of events for individually arriving refugees. It is important to determine who has responsibility for each stage. Registration indicates that this person is seeking asylum within the host country, and the asylum-seeker should be given some form of an identity card.

Slide 7: Conditions of reception

The level of ability of those officials who deal with asylum-seekers upon arrival is a major factor in determining the quality of protection asylum-seekers will enjoy.

Officials who are not aware of, or sensitive to, gender issues or the needs of children may not provide these groups with a suitable interview process.

Enabling legislation is also a major factor: some of the most prominent host countries in the world, such as Pakistan, Iran, and Thailand, have not signed the 1951 Refugee Convention.

As a result, in some countries, reception and RSD processes are often unclear, irregular, or non-existent. This may jeopardise legal protection and material assistance.

Slide 8: All refugees need:

Information, as it is a key protection tool on arrival.

Sometimes, governments and organisations are unwilling to provide asylum-seekers with information on the RSD process on the mistaken assumption that this will somehow promote abuse of the system.

In reality, many genuine refugees can have their claims rejected due to misinterpretation or confusion, or they may feel that they have to exaggerate their stories in order to be recognised as refugees. All information and processes must take place in a language the asylum-seekers understand.

Note to trainer

- ✓ *It is not necessary to provide all the information associated with this slide. Pick out issues that are relevant in the country you are in.*

Slide 9: Special protection needs on arrival

It is important to differentiate between individual asylum-seekers when they arrive to determine if they have special needs. Children, the elderly, mentally and physically disabled people, and women might have particular concerns. These include:

- The need for early screening for special protection needs;
- Immediate family tracing in cases of separation;
- Treatment for trauma;
- Attention to specific medical needs;
- Access to other family members or community members;
- Reproductive health care;
- The need for sensitivity to, and provision for, same-gender assistance, where appropriate.

Taking into account the governing principles embodied in **the Convention on the Rights of the Child**, the additional physical, emotional, and recreational needs of children must be taken into account by all actors.

Special attention should be paid to **the risk of child trafficking**. Separated, underage female asylum-seekers are most vulnerable.

The **elderly and mentally ill** are frequently destitute and risk neglect and abandonment by family members if they are unable to provide care. Some asylum-seekers may be **mentally handicapped** or severely traumatised and unable to articulate their claim, and this may be corroborated through interviews with other family members or persons accompanying them during flight.

Cases of female asylum-seekers often raise specific concerns. For example, their reasons for flight might be due in whole or in part to gender-specific forms of persecution, and this should be raised as a concern to the RSD officials, and special measures should be taken.

Female asylum-seekers need to be interviewed individually with female staff and interpreters, regardless of whether they are accompanied by a male relative. Problems faced by women range from those deriving from shortcomings in asylum procedures to those inherent in poor physical reception conditions.

Without the assistance of **trained staff** or psychological, social, or medical referrals, they may be unable to describe the sexual violence or other forms of persecution that they may have suffered. Depending on their social and cultural background, special attention may be required when providing medical care. Gender-sensitive accommodation arrangements and counselling may also be necessary.

Women accompanying female asylum-seekers may not be able to corroborate the stories of their male relatives, since they may not have been informed about the reasons for flight, either for their own safety or for reasons relating to culture and gender roles.

However, there are other cultural, religious, or gender-specific concerns that arise, and **it must be stressed that many men and boys have suffered sexual violence or forms of torture that they might not be able to speak about**. RSD officials need to be alert to this and ensure that they provide a safe context for the asylum-seeker to indicate the nature of the harm they have suffered.

Slide 10: Refugee status determination (RSD)

The basic principles of a **fair RSD procedure** include, amongst other things:

- Access to an asylum procedure;
- Access to advice and information;
- Right to counsel;
- Access to competent interpreters throughout the process;
- A determination by an independent, impartial, and competent decision-maker;
- Written and detailed reasons for rejection;
- A right to an independent appeal of the decision in the first instance.

Particular emphasis must be placed on the fact that asylum-seekers need to be interviewed in a language they fully understand.

While procedures should not be rushed and thus be unfair, they should also not drag on, leaving the asylum-seeker in legal limbo.

Spouses arriving with their husbands should be given the opportunity to put in a separate claim, as they may have their own valid reasons for applying for asylum.

Interpreters must not intimidate the asylum-seekers and should not have any prejudicial links or possible links to the authorities in the country of origin that might have been the agents of persecution. The asylum-seeker needs to be **comfortable** with the interpreter chosen, as tension between members of different ethnic groups may exist and hinder the free flow of information if the individual thinks the interpreter may be prejudiced.

It is not appropriate for any asylum-seeker to be compelled to give details of how they have been persecuted if doing so would be traumatising. It is often **not necessary for a high level of detail**.

A sophisticated decision-maker, and those who assist asylum-seekers in these proceedings, will know how to elicit the amount of information needed to establish the credibility of the claim being made. They will also know how to support the case in the broader context of general patterns they have observed in other cases or documented in credible human rights reports.

The fairness of the overall RSD system can be measured on the basis of the average length of time that the process takes, and, while procedures should not be rushed and thus be unfair, they should also not drag on, leaving the asylum-seeker in legal limbo.

Slide 11: Lawful detention

One of the most common violations of refugee rights at the time of arrival is that asylum-seekers are **detained**. All asylum-seekers in detention can be exposed to torture and other mistreatment. There is also a danger that they will remain hidden, without access to support from NGOs, legal processes, and communication with their families. **Female asylum-seekers in detention** can be exposed to sexual violence and deprivation.

This is important for humanitarian workers, as they may be amongst the few who have access to those who are detained.

- **Children should never be detained;**
- **Asylum-seekers are not criminals and should not be treated as such or kept with criminals.**

Activity 2 - Case Study			
Timing		Method	Resources needed
Group work on case studies	30'	Case studies	Module6.ppt
Feedback to plenary	20'	Plenary feedback	Handout 1 - Case Study: Arrival at the Airport
Wrap-up	10'		
Total: 60 minutes			Handout 2 - Case Study: Asylum Application Handout 3 - Case Study: Illegal Border Crossing

Note to trainer

- ✓ *The presentation introduced the key concepts that a humanitarian worker would want to bear in mind if they are working in an area where there are individuals arriving and making asylum claims.*
- ✓ *The following case studies provide participants with an immediate opportunity to apply some of the concepts they have just learned. They are designed so that participants can identify gaps in the protection system. Decide prior to the session which case study is most relevant for the context.*
- ✓ *They also help participants to identify and illustrate the concept of complementarity and to discuss how different actors could, on the basis of their organisational strengths and/or mandates, ensure that individual asylum-seekers get better protection at the time of arrival.*
- ✓ *All three case studies follow the story of a refugee arriving in a country. You can modify them to suit the local circumstances, if that is appropriate. However, it is important to retain the key elements of the case that illustrate how authorities, NGOs, and the UNHCR deal with the asylum-seeker.*
- ✓ *It is not necessary for the participants to address all of the issues that arise in the case studies. This will depend on their level of experience.*

Group work on case studies (30 minutes)

Divide the participants into three groups.

Either **distribute** the same case study to each group or a different case study to each group.

Ask the groups to read the case study all the way through, noting the key facts before trying to answer the questions.

Ask each group to answer the questions at the end of each case study.

Display the questions using **Slide 12**.

Slide 12: Case study questions

- Outline the protection issues arising in this case;
- How could the RSD procedure be improved in the state?
- How might your organisation contribute to improving this situation?

Tell them to write on a flip chart the key points that they want to share with the other participants in the feedback session.

Feedback to plenary (20 minutes)

Ask all groups to put their flip charts on the wall.

Ask one group to lead the feedback for the first question and if the other groups have anything to add. Repeat this process for all three questions, leading with a different group each time.

Add additional considerations as necessary.

Wrap-up (10 minutes)

Show Slide 13.

Slide 13: Best practice for states in individual arrivals

Best practice includes:

- Respect for human rights and human dignity;
- An appropriate range and standard of assistance;
- Clear, efficient, and effective RSD procedures;
- Facilitation of self-reliance for asylum-seekers;
- Proactive management of public opinion;
- Burden-sharing with other states;
- Gender sensitivity in all interventions (including RSD) and awareness of special protection issues, such as those related to children, the disabled, and the elderly.

Best-practice approaches give humanitarian actors standards to advocate for within the limits of their role, as well as indicators that can be used to measure changes in state behaviour.

Ask participants what might constitute best practice for NGOs.

The following are some suggestions:

- Identify responsibilities of host governments or the UNHCR, and monitor whether they are delivering on them;
- Share information on asylum-seekers with other NGOs, the government, and the UNHCR, as appropriate;
- Provide information and training to asylum-seekers on their rights and how to access assistance and services;
- Lobby governments on best practice;
- Build the capacity of officials dealing with arrival and RSD, including the training of interpreters, who may be drawn from the refugee population;
- Obtain access to RSD procedures, and monitor their efficiency, fairness, and effectiveness;
- Encourage governments to create and use alternatives to detention and monitor those who are detained;
- Support local community structures.

Handout 1 - Case Study: Arrival at the Airport

Mr A and his family, nationals from State Y, arrive at the airport in the State of K. His wife and two children accompany him, a boy aged 15 and a girl aged 19. The family also includes Mr A's niece, aged 13. On arrival in the State of K, Mr A immediately presents himself to the immigration authorities at the airport and claims asylum for his family. He does not speak the language of the State of K, but the man who organised his flight and false travel documents had given him a piece of paper with the words "Asylum-UNHCR" and a telephone number written on it. Mr A hands the piece of paper to the immigration officer.

The immigration officer does not understand Mr A's language and makes no effort to get an interpreter. He escorts the family to a room in the airport where they are all subjected to a body search. Although a female immigration officer carries out the body search, there are male officers in the room. The wife and three children are taken to a separate room where many other people of different nationalities are waiting.

Mr A is not given any chance to seek any advice or help from anyone, and he does not understand what is happening. He is also very worried because the paper bearing the words "Asylum-UNHCR" has disappeared. No procedure is explained to him, and he is simply asked to describe his reasons for wanting to come to the State of K and claim asylum. Mr A explains to the interpreter that he is a leading member of a minority clan in his country, which is currently torn apart by a civil war. He adds that his senior rank in the clan makes him a particular target, and he also fears for the security of his family. He is not asked to explain what fears his family members have, and the immigration officer does not interview any other members of the family. Not even Mrs A has an opportunity to tell her story.

After 24 hours, Mr A is given a written notice saying that his claim for asylum has been refused "because the facts of his case do not meet the definition of a refugee". He is told that he has another 24 hours to appeal the decision and is given the number of a lawyer. He tries repeatedly to contact the lawyer but does not manage to get through until 36 hours have passed. The lawyer tells him that he is "unfortunately out of time to appeal" and dismisses him by saying that he "can do nothing else to help him".

Mr A is reunited with his family, who have been kept in a locked communal area with minimal facilities, and he tells them the bad news: that they will be deported to their home country very soon. Mrs A tells him that she has collected the numbers of various refugee support agencies.

Background information

- The niece's parents have been killed;
- State Y is in serious turmoil, with increasing conflict and forced conscription of adults and, in some cases, minors;
- The State of K's Immigration Act does not guarantee that asylum-seekers will obtain the assistance of a lawyer at the first stage of the RSD procedure but will get help during the appeals stage. However, an appeal must be lodged within 24 hours of a negative decision being given, and no exceptions can be granted.

The Immigration Act also specifies: "all asylum-seekers will be held in detention until they are removed from the country. Only those granted refugee status will be released and given a permit to stay in the country."

Questions

- Outline the protection issues arising in this case.
- How could the RSD procedure be improved in the State of K?
- How might your organisation contribute to improving this situation?

Handout 2 - Case Study: Asylum Application

Mr R. originates from a West African country torn apart by a civil war that has lasted for many years.

After fleeing across two other countries experiencing civil unrest, Mr R finally arrives in the State of D. Mr R is accompanied by his family, which includes his wife, who is three-months pregnant; their 17-year-old daughter; their adopted son, who is 9 years old; an elderly uncle; and Mrs R's mother.

After staying a couple of weeks with other exiled persons at the border, they complete asylum claim forms and send them as instructed to the Refugee Eligibility Commission, which is a department of the Ministry of Interior.

Two months pass before they are finally granted an individual interview. At her hearing, Mrs R is not able to give details about the reasons why they left their country and keeps repeating that she simply had to leave with her husband.

For the next 10 weeks, their asylum application is examined by the Refugee Eligibility Commission, and the family has no contact at all from the Commission during this time.

During this period, the family contacts several NGOs and the Red Cross Society in D, but they are told that these agencies are not allowed to assist asylum-seekers who have only temporary status. They are told by everyone whom they ask to help them that no assistance can be given to them before they are granted refugee status.

Mrs R. encounters some medical complications and has to be hospitalised. As they cannot afford medical help, she doesn't get the needed care, and she has a miscarriage.

They are finally informed that their asylum claim has been rejected, that the decision is final, and that there is no possibility for appeal.

The Refugee Commission asks them to get in touch with the Immigration Office, which will help them leave the country. Meanwhile, they learn from relatives who remained in their country of origin that the situation has deteriorated and that they should stay away at all costs.

Mr and Mrs R meet a person working in an NGO for the protection of human rights and explain their case. They are told by the NGO representative that he will see what he can do. However, he soon leaves for a mission, and nobody else is answering calls at his office.

Questions

- Outline the protection issues arising in this case.
- How could the actors involved with the R family have assisted or protected them better?
- How might your organisation contribute to improving this situation?

Handout 3 - Case Study: Illegal Border Crossing

Mr P left his country because he was afraid he would be persecuted because he is from an ethnic minority. He arrived in the State of N after paying a smuggler who got him across the border during the dark of night.

Mr P did not know that the State of N is not a signatory to the UN Refugee Convention or its Protocol. He is quite terrified because he thought refugees would be protected in the State of N and finds out soon after arriving that there is no domestic regime for refugee protection. Mr P has a forged passport like most people from his country who have been forced to seek the assistance of a smuggler to leave.

A day after he entered the State of N, he was apprehended and detained by the police under the Foreigners Act, as he did not possess valid travel documents. Mr P was detained immediately and is now in jail.

In jail, Mr P has absolutely no access to a phone and no way of communicating with the outside world. None of the guards appear to speak his language, and he has no idea what the charges are against him and how he can make it clear to the authorities that he is not a criminal – that he is a refugee. No one at the jail seems to know what to do, and everyone spends their days trying to survive in a very harsh place.

After several weeks in jail, a lawyer from a local NGO discovers him while on a periodic visit to the jail. She tells him that her NGO is an implementing partner of the UNHCR and that they assist refugees in dealing with their legal problems. She makes appropriate interventions to the court, and Mr P is granted a bail option to be released from jail pending a determination by the UNHCR of his status as a refugee.

The UNHCR is allowed to operate in the country by the government of N, even though there is no legal protection for refugees in N.

He approaches the UNHCR through his lawyer but has to wait in jail, as he is not able to come up with the funds for bail.

After about a month, the UNHCR grants Mr P refugee status. They also arrange for the bail needed to get him released from jail. Through other refugees in N, Mr P discovers that there are religious leaders who provide occasional help to people like him, and he manages to find work occasionally, cleaning windows and sweeping garbage from the streets. The months pass slowly, and he thinks that he will never work as a teacher again, let alone bring his family to join him.

As a refugee, Mr P receives a residence permit to show that he has legal status, but he is not eligible to work in N and continues to work at odd jobs to support himself. He also finds it impossible to find a landlord who will rent him accommodation at the rate nationals pay, and, as a result, Mr P has to pay an exorbitant rent.

Mr P is very thankful to the UNHCR and the State of N for protecting him, but he wonders how much longer he must suffer and live a life where he can barely afford to eat and have a roof over his head.

Questions

- Outline the protection issues arising in this case.
- How could the RSD procedure be improved in the State of N?
- How might your organisation contribute to improving this situation?