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A guide to international refugee protection
and building state asylum systems

Compilation of Checklists for Parliamentarians

Handbook for Parliamentarians No. 27, 2017

The Handbook for Parliamentarians No. 27 – A Guide to international refugee protection and building state asylum systems, jointly published by the Inter-Parliamentary Union (IPU) and the United Nations High Commissioner for Refugees (UNHCR) addresses contemporary challenges and sets out applicable international legal standards and obligations for refugees and others in need of international protection in a way that is intended to be as accessible and yet as comprehensive as possible. A particular focus of the Handbook is on establishing and maintaining asylum systems and the mechanisms to enable States to respond promptly and effectively to the arrival of asylum-seekers and refugees. More specifically, the Handbook outlines what needs to be in place for protection-sensitive entry systems to regulate mixed movements of people, ensuring fair and efficient asylum procedures, respecting the rights and dignity of refugees, and addressing specific needs and diverse protection concerns. It also identifies strategies to promote greater tolerance and respect for refugees and asylum-seekers, as well as to support durable solutions for refugees and others in need of international protection.

Included in the Handbook are checklists on different topics assisting Parliamentarians in the legislative process of preparing and approving legislation in line with states' international obligations. This booklet contains a compilation of the checklists. The chapter numbers correspond with the chapters of the Handbook.

The Handbook is an electronic resource tool, available via [Refworld](https://www.ipu.org/resources/publications/handbooks) and <https://www.ipu.org/resources/publications/handbooks>.

Contents

| | |
|---|-----------|
| Chapter 1 – The international legal framework protecting refugees | 6 |
| The right to seek and enjoy asylum | 6 |
| Chapter 2 – Roles and responsibilities for protecting refugees | 7 |
| Role of UNHCR | 7 |
| Supporting and funding refugee protection and UNHCR’s work | 7 |
| Chapter 3 – Managing the border and regulating the entry of refugees | 8 |
| <i>Non-refoulement</i> principle | 8 |
| Expulsion..... | 9 |
| Extradition proceedings | 10 |
| Ensuring security and protecting refugees | 10 |
| Rescue and interception at sea..... | 10 |
| Onward movement..... | 11 |
| Smuggling, trafficking and refugee protection | 12 |
| Protection-sensitive entry systems..... | 12 |
| Non-penalization for irregular entry..... | 13 |
| Chapter 4 – Receiving asylum-seekers and refugees | 14 |
| Reception facilities, registration and assistance | 14 |
| Detention and alternatives to detention..... | 15 |
| Responding to mass influx..... | 17 |
| Civilian and humanitarian character of asylum | 17 |
| Chapter 5 – Determining who needs international protection | 18 |
| Recognition of refugee status on a <i>prima facie</i> basis..... | 18 |
| Inclusion..... | 18 |
| Exclusion..... | 19 |
| Complementary protection..... | 19 |
| Temporary protection or stay..... | 20 |
| Chapter 6 – Making asylum procedures fair and efficient | 21 |
| Fair and efficient asylum procedures | 21 |
| Minimum procedural guarantees..... | 22 |

| | |
|---|-----------|
| Ensuring confidentiality in line with relevant data protection principles and standards | 23 |
| Registering and adjudicating claims | 23 |
| Admissibility decisions | 24 |
| Arrangements for allocating responsibility for examining an asylum claim | 26 |
| Interview and decision-making process at first instance | 26 |
| Accelerated procedures for examining the substance of a claim | 27 |
| Subsequent applications and withdrawal or abandonment of applications | 27 |
| Appeals and effective remedy | 28 |
| Asylum-seekers with specific needs in the asylum procedure | 28 |
| Recognition of refugee status | 30 |
| Cancellation and revocation of refugee status | 31 |
| Cessation of refugee status | 31 |
| Return of persons found not to be in need of international protection | 32 |
| Chapter 7 – Respecting the rights and dignity of refugees | 34 |
| The obligations of refugees | 34 |
| The right to freedom of movement | 34 |
| The right to family unity | 35 |
| The right to work | 36 |
| The right to education | 36 |
| Access to courts | 37 |
| Right to social welfare and healthcare | 37 |
| Other rights | 38 |
| Rights and benefits of persons with complementary forms of protection | 38 |
| Tackling racism and xenophobia | 38 |
| Engagement with human rights mechanisms | 39 |
| Chapter 9 – Securing durable solutions | 40 |
| Voluntary repatriation | 40 |
| Local integration | 42 |
| Resettlement | 43 |
| Innovative approaches to resettlement and other migration channels | 44 |
| Naturalization | 44 |
| Protracted refugee situations | 45 |

Chapter 1 – The international legal framework protecting refugees

The right to seek and enjoy asylum

- ✓ Accede to the [1951 Convention relating to the Status of Refugees](#) and approve national legislation implementing the provisions of the Convention in order to give effect to the right to seek and enjoy asylum affirmed in the [Universal Declaration of Human Rights](#).
- ✓ Ensure – where relevant – that regionally-recognized rights to asylum ([African Charter on Human and Peoples' Rights](#), Article 12(3); [American Convention on Human Rights](#), Article 22(7); the [American Declaration on the Rights and Duties of Man](#), Article XXVII; [Charter of Fundamental Rights of the European Union](#), Article 18) are protected by the constitution or otherwise reflected in national legislation.
- ✓ Make clear in legislation that the grant of asylum is a non-political, peaceful and humanitarian act.
- ✓ Distinguish clearly in legislation between refugee status and other forms of asylum, such as diplomatic asylum in Latin America or the discretionary power conferred in some countries on the Head of State to grant asylum on political grounds.

Chapter 2 – Roles and responsibilities for protecting refugees

Role of UNHCR

- ✔ Include in legislation an obligation for national authorities to cooperate with UNHCR, including by sharing information and statistical data on refugees in the country, as well as by sharing laws, regulations and decrees relating to refugees.
- ✔ Include provisions allowing UNHCR access to asylum-seekers and refugees wherever they are located, including if detained or held at the border, and allowing asylum-seekers and refugees to be able to access UNHCR.
- ✔ Create an advisory role for UNHCR in national asylum procedures, including, for instance, by notifying UNHCR of asylum applications, allowing UNHCR access to individual case files (with the consent of the asylum-seeker concerned), facilitating opportunities for UNHCR to be consulted by status determination authorities, and incorporating in national legislation the right for UNHCR to submit its own recommendations on individual cases at first instance or on appeal.
- ✔ Where UNHCR has made arrangements with an organization that is working on its behalf, ensure that cooperation is extended to that organization. Depending on the context, it can also be useful to include other NGOs in this cooperation, even if they are not formally working on UNHCR's behalf.

Supporting and funding refugee protection and UNHCR's work

- ✔ Advocate for national budgetary allocations to meet refugee reception needs, including health, education and other services; to establish fair and efficient asylum procedures; and to support activities to find durable solutions.
- ✔ Include refugees in national development planning and budgeting – including in work related to the Sustainable Development Goals – thus facilitating the development of programmes that address refugee needs and avoiding parallel structures.
- ✔ Encourage the government to contribute to UNHCR or increase its contribution – particularly with regards to requests for funding refugee emergencies – since UNHCR's work depends on voluntary contributions.

Chapter 3 – Managing the border and regulating the entry of refugees

Non-refoulement principle

- ✔ Specify that no one shall be returned, expelled or extradited in any manner whatsoever to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, or to cruel, inhuman or degrading treatment or punishment.
- ✔ Specify that refugees and asylum-seekers shall not be *refouled*. Since Article 33 of the [1951 Convention](#) (the prohibition on *refoulement*) is not subject to reservation, the phrasing of such a provision is of utmost importance. In general, it is safest to transpose this provision verbatim into national law.
- ✔ Explicitly protect from *refoulement* persons who fall under applicable regional refugee definitions.
- ✔ Include a provision explicitly clarifying that the prohibition against *refoulement* includes indirect *refoulement*.
- ✔ Include a provision clarifying that protection from *refoulement* includes non-rejection at the border, so that no one who is seeking asylum can be rejected at the border if this would result in their being returned, directly or indirectly, to a country of persecution, torture, inhuman or degrading treatment or punishment.
- ✔ Ensure that the scope of application of Article 33(1) of the [1951 Convention](#) is not implicitly or explicitly restricted to conduct within the territory of a State party, but applies wherever effective jurisdiction is exercised. The decisive criterion is not whether a person is on the State's territory, but rather, whether he or she comes within the effective control and authority of that State. If possible, regulate this issue explicitly in the text of the law.

Exceptions to the *non-refoulement* obligation:

- ✔ Ensure that any exceptions to the *non-refoulement* obligation do not go beyond what is contained in Article 33(2) of the [1951 Convention](#). The best way to do this is to incorporate the text of Article 33(2) directly, which permits the *refoulement* of a refugee only:
 - (i) where there are “reasonable grounds for regarding [the refugee] as a danger to the security of the country in which he is”; or
 - (ii) where the refugee, “having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”.
- ✔ No exceptions are allowed if the State is party to the [OAU Refugee Convention](#) (Article II(3)) or the [American Convention on Human Rights](#) (Article 22(8)). The prohibition of *refoulement* in those treaties is absolute.
- ✔ Affirm that protection from *refoulement* is absolute under international human rights law, notwithstanding the exceptions under Article 33(2) of the [1951 Convention](#).

Expulsion

- ✔ Exclude asylum-seekers and refugees from the scope of expulsion, deportation or removal provisions applying to foreigners in general, in keeping with the principle of *non-refoulement*. Return to the country of origin is only permitted in the exceptional circumstances described in Article 33(2) of the [1951 Convention](#), and in some cases international human rights law may bar such return.
- ✔ Expulsion orders may not be issued to a refugee lawfully in a State’s territory, save on grounds of national security or public order in accordance with Article 32(1) of the [1951 Convention](#).
- ✔ Where domestic legislation provides for expulsion, ensure that the conditions and procedural safeguards for refugees contained in Article 32(2) and (3) of the [1951 Convention](#) are explicitly included in the law.
- ✔ Expulsion orders should not be issued to asylum-seekers whose claims are pending. At a minimum, the law should provide for the non-implementation of expulsion orders until a final decision on the asylum application has been made. If the asylum-seeker is recognized as being in need of international protection, any previously issued expulsion orders should automatically lose their validity.

Extradition proceedings

- ✔ Authorities should be barred from extraditing a refugee or asylum-seeker if doing so would be inconsistent with the State's *non-refoulement* obligations under international or regional refugee and human rights law, regardless of whether the relevant authorities in the country to which the refugee is to be removed have offered assurances that the person concerned will not be subjected to persecution or other forms of harm.
- ✔ Ensure that there are separate procedures with due process safeguards for decisions on asylum claims and extradition requests. Extradition authorities should be legally bound by a determination on refugee status or other international protection needs made by asylum authorities.

Ensuring security and protecting refugees

- ✔ Ensure that any discussion on security safeguards in the context of border control starts with an acknowledgement that refugees are themselves escaping persecution and violence, including terrorist acts.
- ✔ Where governments wish to strengthen border controls and security checks, including through the use of biometrics such as fingerprints, iris scans and/or facial characteristics, ensure that:
 - ✔ Controls are conducted in conformity with the principles of necessity, proportionality and non-discrimination, and are subject to judicial oversight;
 - ✔ Individuals are not singled out solely on the basis of their assumed nationality, race, religion or ethnicity, and
 - ✔ Checks are conducted in line with data protection principles and other relevant human rights standards.

Rescue and interception at sea

- ✔ Strengthen regional and national search and rescue (SAR) capacities and coordination; develop regional mechanisms to identify "safe places" to disembark those rescued; ensure that ship masters who undertake rescues are not penalized; and implement international legal standards and guidance on SAR and disembarkation, as set out in the publications referred to above.

- ✔ Encourage regional burden-sharing between coastal and non-coastal States, including by supporting capacity building measures and allocating funding for reception arrangements in countries where persons rescued at sea are disembarked.
- ✔ Introduce and/or strengthen measures to ensure that non-rescue-related interceptions at sea do not result in *refoulement*. These measures should not prevent asylum-seekers and refugees from seeking protection, nor should they shift burdens elsewhere or otherwise weaken international protection and responsibility sharing. Interception at sea must incorporate protection safeguards and comport with international law.
- ✔ Advocate for national responses for people arriving by sea (including those rescued or intercepted) to take international protection needs into account. This should include access to safe territory and protection from *refoulement*; humane treatment; prompt efforts to identify persons seeking protection or who have special needs, including refugees, asylum-seekers, stateless people, victims of trafficking, and unaccompanied or separated children; access to fair and efficient asylum procedures and the referral of persons with specific needs to processes or facilities providing appropriate care and protection.
- ✔ Advocate for initiatives that tackle the root causes of irregular movements by sea more broadly through support for peace-building and development in countries of origin, by encouraging pathways for legal mobility and orderly entry, and by enhancing efforts to find durable solutions to protracted refugee situations.

Onward movement

- ✔ Advocate for regional and/or bilateral cooperation to respond to onward movement of refugees and asylum-seekers, whether specifically or as part of a broader approach to mixed migratory movements. Such cooperation can provide more consistent and coherent responses, help to share responsibilities more equitably, and provide a framework for addressing some of the root causes of onward movement.
- ✔ Engage international development and financial actors in host countries in recognition of the fact that developing and middle income countries shoulder disproportionate responsibility for hosting refugees. Include refugees in wider development strategies, so as to help strengthen refugee protection and solutions.
- ✔ Help to strengthen and harmonize protection capacity in host countries by:
 - ✔ Developing and strengthening legislation, the rule of law, and institutions promoting security and respect for fundamental rights;
 - ✔ Strengthening host countries' ability to operate asylum systems that reflect international standards and good practice.

- ✔ Support the creation of safe and legal options for refugees to move onward, whether to reunite with family or to meet their protection and assistance needs, as an important step towards reducing irregular, hazardous journeys and the use of criminal smuggling networks.

Smuggling, trafficking and refugee protection

- ✔ Criminalise and distinguish in law the smuggling of migrants and trafficking in persons. Ensure that the definitions align with international legal standards set out in the UNTOC Palermo [Protocol against the Smuggling of Migrants](#) and the [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#), as different elements, obligations and punishments apply to each. In particular, the crime of smuggling of migrants should be for the purpose of a financial or other material gain whereas the crime of trafficking in persons should be for the purpose of exploitation.
- ✔ Ensure that victims themselves are not criminalised in the above mentioned laws, nor by their implementation.
- ✔ Ensure that foreign victims of trafficking are informed of their right to seek and enjoy asylum. This right is absolute. It cannot be made conditional on their cooperation with law enforcement. Similarly, the evaluation of the merits of a claim for international protection should not be influenced by the willingness of the victim to give evidence in legal proceedings against an alleged trafficker.
- ✔ Ensure that provisions in legislation regarding the return and repatriation of foreign victims of trafficking respect the principle of *non-refoulement* and the *best interests of the child* and are implemented in practice.
- ✔ Provide national authorities involved in identifying victims of trafficking and/or providing them with physical, psychological and social support with training regarding the right to seek and enjoy asylum for victims. Authorities should enable victims to lodge and pursue an asylum claim when sought.

Protection-sensitive entry systems

- ✔ Implement screening mechanisms for people moving between countries irregularly to (1) assist entry officials in identifying asylum-seekers and others with specific needs and refer them to the responsible authorities and (2) identify potential security risks and refer these to appropriate law enforcement authorities.

- ✔ Ensure that entry systems:
 - ✔ Identify which authorities are involved and allocate responsibilities accordingly, including child protection and guardianship services, immigration and asylum authorities, the authority responsible for determining statelessness (if one exists), the authority responsible for combatting trafficking in human beings, and health services;
 - ✔ Set out procedures to determine the appropriate line of onward referral depending on the situation of the person concerned in order to provide assistance, protection and a decision on his or her status;
 - ✔ Identify other relevant actors that may be involved, including UNHCR, IOM, national NGOs or other bodies;
 - ✔ Set out how the different actors involved should coordinate, implement and monitor responses to ensure regular communication, coordinated responses and accountability;
 - ✔ Adapt responses to different entry situations such as seaports, airports, including transit zones, land borders, and encounters beyond national borders; and
 - ✔ Allocate sufficient resources for these mechanisms to function effectively, including for the training officials, interpretation services, and counselling as needed.

Non-penalization for irregular entry

- ✔ Refugees should not be penalized for their illegal entry or presence when they come directly from a territory where their life of freedom was threatened, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
- ✔ Bar criminal proceedings for irregular entry or stay against individuals who have applied for asylum, until the final outcome of the asylum claim, referring to relevant immigration/asylum law provisions to ensure consistency.
- ✔ Do not penalize or detain asylum-seekers if, for valid reasons, they do not collaborate in identifying smugglers, in line with the non-penalization clauses of the [1951 Convention](#) and the [Smuggling Protocol](#).

Chapter 4 – Receiving asylum-seekers and refugees

Reception facilities, registration and assistance

- ✔ Assist asylum-seekers who cannot meet their subsistence needs independently until at least the final outcome of the claim.
- ✔ Where legislation regulates reception facilities at the borders, including air and sea borders, provide all necessary assistance, including food, shelter and basic sanitary and health facilities.
- ✔ Where legislation restricts asylum-seekers' freedom of movement, restrictions should not be excessive.
- ✔ Each individual asylum-seeker should receive individual documentation attesting to their identity and status and confirming that the bearer is allowed to remain in the territory of the State pending a final decision on the asylum application.
- ✔ Single men and women should be housed separately, and family members should be able to stay together.
- ✔ Reception arrangements should not be withdrawn for failure to comply with asylum procedure requirements (e.g. not coming to an interview), as this may affect an asylum-seeker's family members, in particular children.
- ✔ Asylum-seekers should have access to primary health care (including antiretroviral therapy if needed) and emergency medical care, both upon arrival and throughout the asylum procedure.
- ✔ Provide for psychological care and counselling free of charge for survivors of torture and traumatized persons.
- ✔ Asylum-seekers should receive basic tuition in the language of the country of asylum.
- ✔ Asylum-seekers should have access to the labour market, either immediately or within a limited time after the asylum application is lodged, and to vocational training and other public programmes, where available.
- ✔ Reception arrangements should take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, and the inclusion of measures for early identification of asylum-seekers with specific needs.

- ✓ With regard to child asylum-seekers, ensure that legislation provides for their best interest to be a primary consideration in all actions concerning them.
- ✓ Primary education should be free and compulsory for all asylum-seeking children. Given the importance of education, secondary education should also be made available to asylum-seekers. If education of asylum-seekers is provided in facilities separate from regular schools, this should be for a limited period only, as this contributes to marginalization.
- ✓ Ensure that legislation provides for the identification of girls and boys at risk, and the determination of what accommodation arrangements are in their best interests, including foster care as required.
- ✓ With regard to unaccompanied and separated child asylum-seekers, a guardian or adviser should be appointed as soon as the child is identified. Legislation should also include family tracing and reunification wherever possible and in the child's best interests.
- ✓ Unaccompanied and separated child asylum-seekers should have access to social services and legal protections on the same basis as any other similarly-situated child in the host country.
- ✓ UNHCR should have a right of access to all reception facilities and that it allows all asylum-seekers to contact UNHCR.

Detention and alternatives to detention

- ✓ Any definition of detention should also cover confinement in airport or seaport transit zones, including where the only opportunity to leave these limited areas is to leave the territory.
- ✓ Since human rights law prohibits arbitrary detention, detention should only be resorted to where it is provided for by law, where it is necessary to achieve a legitimate purpose, and where it is proportionate to the objectives to be achieved. The necessity of detention needs to be established in each individual case, following consideration of alternatives.
- ✓ Asylum-seekers and refugees should not be detained solely for immigration-related reasons.
- ✓ When legislation authorizes the detention of asylum-seekers and refugees, it should spell out the legitimate grounds on which such authorization rests, which should not go beyond those identified by the UNHCR Executive Committee in its [Conclusion No. 44](#): that is, to verify identity; to determine the elements of a claim in the context of a preliminary interview; to ensure the cooperation of an asylum-seeker who has

destroyed documents or used fraudulent documents with the intention to mislead authorities; and to protect national security.

- ✔ Promote and support a ban on detention of children, whether unaccompanied, separated or with their family. If such a ban is not possible, support an approach that avoids detaining children on the basis of irregular entry or stay and requires that the use of alternatives, such as residential homes or foster care placements, be examined before any detention.

Due process guarantees:

- ✔ Specify that individuals deprived of their liberty should be informed promptly, in a language that they understand, of the reasons for their detention.
- ✔ Specify that asylum-seekers should not be held in detention for any longer than necessary, that all detention measures should be subject to judicial or administrative review, that where detention is authorized, it shall be reviewed periodically, and that maximum periods of detention are set.
- ✔ Specify that refugees and asylum-seekers who are detained have the opportunity to contact UNHCR or, if UNHCR does not have an office in the State, national refugee assistance agencies, and that UNHCR will be given access to any refugees and asylum-seekers in detention.

Detention conditions:

- ✔ Ensure that laws and regulations regarding the detention of asylum-seekers and refugees include measures to safeguard their dignity.
- ✔ Asylum-seekers and refugees should not be housed with persons accused or convicted of criminal offenses.
- ✔ Monitor conditions of detention through visits to detention centers and/or by following up on reports on conditions from National Human Rights Institutions, other agencies or NGOs.
- ✔ If detention conditions are set out in legislation, consult with UNHCR and/or other organisations (for example ICRC, where relevant) to ensure that the legislation complies with existing international and regional standards.

Responding to mass influx

In countries receiving a mass influx:

- ✔ Keep borders open, which is in keeping with the principle of *non-refoulement*.
- ✔ New arrivals should receive protection and assistance in line, at a minimum, with the standards outlined in Executive Committee [Conclusion No. 22](#).
- ✔ Develop procedures in either legislation or regulations to respond to mass influx situations. Ideally, this should be done before a mass influx occurs.
- ✔ Encourage the government to invite UNHCR (and other UN agencies) to provide advice and assist in the delivery of protection and assistance.
- ✔ Encourage the government to call for international consultations to develop appropriate responses and a comprehensive plan of action to apportion burdens and responsibilities in response to the influx.

In other countries:

- ✔ Encourage your government to call for and participate in consultations on the international response to a mass influx situation, in order to develop a comprehensive plan of action to apportion burdens and responsibilities, and urge your government to provide assistance and support.
- ✔ Support measures to prevent returning persons not only to the country from which the exodus is occurring, but also to countries overburdened by large-scale arrivals from the country in crisis.
- ✔ Advocate for the use of emergency resettlement, humanitarian evacuation/admission, family reunification and/or humanitarian and student visas, including by your country, to provide legal pathways to safety for persons affected by the crisis.

Civilian and humanitarian character of asylum

- ✔ Emergency response procedures should include a duty for the State to identify, disarm and separate combatants from the refugee population and intern them at a safe location from the border.
- ✔ Special protection and assistance measures should be available for children formerly associated with armed forces or groups, in particular as regards their demobilization and rehabilitation.
- ✔ Advocate for humanitarian access, allowing and facilitating rapid and unimpeded passage of humanitarian personnel, equipment and relief for civilians in need.

Chapter 5 – Determining who needs international protection

Recognition of refugee status on a *prima facie* basis

- ✔ Support a provision requiring the legal basis for recognition as a refugee to refer specifically to the instrument on which this is based, whether this be the [1951 Convention](#) or a regional instrument.
- ✔ Persons recognized on a *prima facie* basis should receive all the benefits of refugee status.
- ✔ Draw a clear distinction between refugees and fighters/combatants; the latter are not eligible for protection as refugees. Civilian family members of fighters/combatants are able to benefit from refugee status on a *prima facie* basis and should not be lumped together with fighters/combatants.
- ✔ Former fighters/combatants should not be considered as asylum-seekers unless they have permanently and genuinely renounced military activities, in which case a full individual examination of their claim is required.
- ✔ Where legislative provisions also enable the authorities to terminate a decision to apply a *prima facie* approach, ensure that this only applies to asylum-seekers arriving after the date of the revision or amendment. Any revision of the status or the rights of those members of the group who are already refugees should be undertaken in accordance with cancellation, revocation or cessation of refugee status provisions.

Inclusion

- ✔ The definition of the term “refugee” used in national legislation should include all the elements contained in the [1951 Convention](#). The definition should specifically refer to Article 1(A)2 of the [1951 Convention](#) and its 1967 Protocol (and if relevant to Article 1, paragraph 1 of the [1969 OAU Convention](#) or to the [Cartagena Declaration](#)).
- ✔ If your country is a party to the [1969 OAU Convention](#), make sure the definition of the term “refugee” includes the additional elements outlined in Article 1, paragraph 2 of that Convention.

- ✓ If the [1984 Cartagena Declaration](#) is implemented in national legislation, make sure the definition of the term “refugee” includes the additional elements outlined in its Conclusion III, paragraph 3.
- ✓ If your State is not yet party to the [1951 Convention](#), the [1967 Protocol](#) or the [1969 OAU Convention](#), support pragmatic responses that allow for the recognition on an ad hoc basis of individuals or groups as refugees, and encourage the extension of such protection on a more systematic basis to other refugees in the future.
- ✓ Where draft legislation proposes to regulate specific aspects of the refugee definition, use [UNHCR’s Handbook on Procedures and Criteria for Determining Refugee Status](#) and UNHCR’s [Guidelines on International Protection](#) as reference points to ensure the definition is adequately incorporated in national law.

Exclusion

- ✓ Use the exact wording of the exclusion clauses of the [1951 Convention](#) and, where applicable, the [1969 OAU Convention](#). Oppose the inclusion of any further grounds for exclusion.
- ✓ Advocate against the examination of exclusion issues in simplified or accelerated procedures. Similarly, oppose any consideration of possible exclusion in the context of a determination of the admissibility of a claim. Exclusion is a complex matter that merits a full examination.
- ✓ Serious non-political crimes committed in the host country are **not** grounds for exclusion, since Article 1F(b) refers to crimes committed before admission – that is, *before* entry into the country. Persons suspected of crimes in the host country should have their cases dealt with under the criminal laws of the country.
- ✓ If domestic legislation contains definitions of “serious” and “non-political” crimes, consult and take account of the considerations set out in UNHCR’s [Guidelines on international protection on exclusion](#) at paras. 14–15 and at paras. 37–43 of the corresponding [Background note](#), to ensure that any definitions are in line with this guidance.

Complementary protection

- ✓ In countries not covered by the [1969 OAU Convention](#) or the [1984 Cartagena Declaration](#), support the introduction of complementary forms of protection as a pragmatic way to meet the protection needs of individuals who have been compelled to leave their country because of a violent or disruptive situation.

- ✔ Domestic legislation on complementary forms of protection should not undermine the refugee protection regime. Clarify that a determination should first be made as to whether an asylum-seeker is a refugee before assessing whether she or he is eligible for a complementary form of protection.
- ✔ Provide a secure legal status for persons eligible for a complementary form of protection.
- ✔ Where domestic legislation provides for exclusion from complementary protection, the criteria applied should be the same as those set out in Article 1F of the [1951 Convention](#), as these exclusion grounds may affect persons who are refugees.
- ✔ Ensure equal treatment for refugees and beneficiaries of complementary forms of protection.

Temporary protection or stay

- ✔ If temporary protection is introduced in national legislation, it can be used as a provisional protection response to situations of mass influx and humanitarian crisis.
- ✔ Support the provision of a formal legal status for persons granted temporary protection or stay. Ideally, this status should last initially up to a year and be extendable to a maximum of three years.
- ✔ At a minimum, persons granted temporary protection or stay should be provided with protection from *refoulement* and treatment consistent with basic human rights standards as outlined in [Executive Committee Conclusion No. 22](#) and applicable international or regional human rights law.
- ✔ Beneficiaries of temporary protection or stay arrangements should be able to access asylum procedures, and that access should not terminate upon expiry of the temporary protection regime.
- ✔ Investigate the possibility of providing for a temporary or humanitarian status to respond to the protection needs of persons fleeing disasters and the effects of climate change who do not fulfil the [1951 Convention](#) refugee definition.
- ✔ Use regional and/or bilateral forums to establish common understandings and approaches to cross-border displacement as a result of disasters and the effects of climate change, whether this be through issuing humanitarian visas, stays of deportation, granting refugee status in exceptional cases, using bilateral or regional arrangements on free movement of persons, expediting normal migratory channels, or the issuance of work permits.

Chapter 6 – Making asylum procedures fair and efficient

Fair and efficient asylum procedures

- ✔ Designate a single, clearly-identified, expert authority with responsibility for examining refugee status applications and making a decision in the first instance, including for any admissibility, border and accelerated procedures, if these are provided for. The designated authority may be administrative or quasi-judicial, according to the prevailing legal system in the country concerned. The authority should be provided with adequate resources, including qualified and trained staff and quality country-of-origin services, for the effective exercise of its duties.
- ✔ Designate a tribunal or other independent, expert authority responsible for assessing appeals in order to ensure an effective remedy for an adverse decision at the first instance.
- ✔ If legislation provides for other forms of international protection beyond refugee status, support the introduction of a single procedure to identify international protection needs, so that each case is examined in its entirety by the same authority.
- ✔ Incorporate the minimum procedural standards and, as relevant, other elements as set out in more detail in subsequent sections.
- ✔ Support the fairness and efficiency of decision-making by providing sufficient funding and resources by:
 - ✔ Allocating sufficient resources for the recruitment of suitably qualified staff – including those at the border, registering and determining claims – and for their training on an ongoing basis to ensure all officials have the necessary competence; and
 - ✔ Making country of origin and other information services available to asylum authorities to enable them to make an informed and accurate assessment of each case. These services should provide accurate, impartial and up-to-date knowledge of the asylum-seeker’s country of origin or habitual residence, including its laws and their application in practice.

Minimum procedural guarantees

- ✔ Assign clear responsibilities for relevant authorities and their personnel for providing necessary information and guidance and for acting in accordance with international refugee law, including, notably, the principle of *non-refoulement*;
- ✔ Establish specific asylum procedures using qualified personnel;
- ✔ Asylum-seekers have the right to legal advice and representation, the services of a competent interpreter, and the opportunity to contact UNHCR. Relevant authorities are responsible for informing them of these rights. Refugees should have access to free legal aid where available;
- ✔ Asylum-seekers have the right to access the report of the personal interview and the opportunity to clarify apparent inconsistencies in a further interview;
- ✔ While asylum-seekers must present a claim, the duty to ascertain and evaluate all the relevant facts is shared between the asylum-seeker and the examiner;
- ✔ Require the relevant authority to explain, in writing, the reasoning behind a negative outcome, in fact and in law, and to share it with the asylum-seeker (again, in writing) within a timeframe that enables the refugee to file a timely appeal;
- ✔ Require the asylum-seeker to be informed verbally in a language he or she understands about the reasons for the decision, about his or her right to appeal a negative decision, and about the applicable timeframes and procedures for lodging an appeal;
- ✔ Fix a reasonable time within which an asylum-seeker can appeal for a formal review of the decision by an authority, court or tribunal that is separate from and independent of the authority which made the original decision and is required to examine both facts and law based on up-to-date information and permitting the asylum-seeker to remain on the territory until a final decision has been made on the claim, except in very limited cases.
- ✔ Ensure that sufficient resources are allocated to enable these guarantees to be upheld in practice.

Ensuring confidentiality in line with relevant data protection principles and standards

- ✔ Safeguard the confidentiality of information relating to asylum-seekers' and refugees' personal data, including fingerprints and other biometric data.
- ✔ Include appropriate safeguards for ensuring confidentiality of information.
- ✔ When information about an asylum-seeker or refugee is requested by another State, data protection principles and international human rights law obligations must be respected and that personal data may only be transferred to a national law enforcement agency or national court where the criteria outlined above are fulfilled.
- ✔ All staff, including border guards, security staff, reception centre staff, counsellors, interpreters, legal advisers, and medical practitioners, who work with asylum-seekers and refugees, have a duty to ensure the confidentiality of information received from or about asylum-seekers and refugees.
- ✔ If legislation is proposed allowing law enforcement authorities to have access to asylum databases, remind others of the risks that this brings in terms of creating presumptions of criminal suspicion, when seeking asylum is not a crime; of fuelling misperceptions about links between asylum and crime; and of fuelling xenophobia and intolerance.
- ✔ Do not permit the authorities to seek information needed to assess an asylum application from the alleged persecutor, as this may result in additional protection risks for the asylum-seeker and his or her family members and dependants upon return, and/or jeopardize the liberty and security of his or her family members or associates still living in the country of origin.

Registering and adjudicating claims

- ✔ Designate the authority(ies) authorized to register and assess claims for asylum. Border officials should not be given this responsibility; rather, they are required to refer persons seeking asylum to the designated authority.
- ✔ Specify that all asylum applications, however expressed or lodged, should be registered, that the definition of asylum-seeker includes anyone who expresses a wish for asylum, whether a formal application has been lodged or not. Ensure that legislation does not contain any direct or indirect obstacle that prevents individuals in detention, including immigration detention, from submitting an asylum claim.
- ✔ The asylum-seeker and all family members accompanying him or her should be registered and issued with appropriate individual documentation, which reflects their status as asylum-seeker(s) and remains valid until the final decision is taken on their asylum application(s).

Claims submitted at the border

- ✔ Asylum-seekers who submit an application at the border should be admitted into the territory of the State and given a temporary right to remain there until a final determination on the asylum application has been made, irrespective of whether or not they possess personal identity or travel documents.
- ✔ Consider whether it is appropriate, depending on the national context, for legislation to provide that claims submitted at the border, including airports, be assessed on the basis of a special border procedure, usually requiring asylum-seekers to remain confined at the entry point. If this approach is adopted, ensure that the same requirements of due process of law are in place as for applications submitted in the territory. The principle of non-discrimination, requires that all asylum-seekers, irrespective of whether they apply at the border or inside the country, benefit from the same basic principles and guarantees.
- ✔ If legislation denies the right to enter the territory to asylum-seekers who have submitted their claims at the border, the legislation should limit this restriction only to manifestly unfounded or clearly abusive claims or to cases where it is necessary to examine whether another State is competent to review the asylum application based on bilateral or multilateral agreements. Minimum procedural guarantees should be in place for such procedures. Legislation should specify that even in such cases particularly vulnerable asylum-seekers, such as separated children, older people, persons with disabilities, and the sick and traumatized, should always be admitted to the territory and their claims processed in the regular procedure.
- ✔ Consider going to the border to monitor the effectiveness of access to territory and access to the asylum procedure or suggest that the national human rights commission or ombudsperson does so.

Admissibility decisions

- ✔ Legislation should not contain automatic bars to the examination of asylum applications' substance, save in circumstances where "first country of asylum" and "safe third country" concepts apply, provided that appropriate safeguards as set out in this section are in place;
- ✔ No strict or rigid time limit should be imposed for the submission of an asylum claim to authorities;
- ✔ Legislation should specify that the denial of claims on grounds of admissibility should lead to a claim being declared "inadmissible" and not to a "rejection" of the claim. This distinction is necessary to adequately reflect the fact that a denial of admissibility is not based on a substantive examination of the claim.

First country of asylum

- ✔ If legislation provides for the application of the “first country of asylum” concept, it should require an individual assessment as to whether the protection in the other country is both still genuinely “available” – that is, accessible to the individual concerned – and “effective” – that is, in line with the standards set in the [1951 Convention](#) and the criteria set out above.

Safe third country

- ✔ Applications should **not** be declared inadmissible on the basis that a third country is responsible, normally a country of transit or previous stay (safe third country concept). Instead, promote the negotiation of bilateral or multilateral agreements on responsibility sharing (see below).
- ✔ Where the “safe third country” concept remains in draft legislation, advocate for the following conditions:
 - ✔ That an assessment of whether the asylum-seeker can safely be sent to a third country for determination of the claim must be made on an individualized basis and the applicant must be given an effective opportunity to rebut the presumption of safety;
 - ✔ That the “safe third country” must be found to be a country where the asylum-seeker will be protected against *refoulement*, persecution and other risks of harm;
 - ✔ That the asylum-seeker will be treated with respect for his or her fundamental rights and in accordance with accepted international standards;
 - ✔ That the asylum-seeker should already have a connection or close links with the third country, so that it appears fair and reasonable that he or she be called upon first to request asylum there;
 - ✔ That the third country expressly agrees to admit the asylum-seeker to its territory and permits him or her to remain there as lawfully present for the duration of the asylum procedure;
 - ✔ That the third country expressly agrees to examine the asylum claim in substance in a fair and efficient procedure, and if the asylum-seeker is recognized provides access to the rights set out in the [1951 Convention/1967 Protocol](#); and
 - ✔ That the burden of proof for establishing that the third country is safe for the individual asylum-seeker concerned lies with the authorities wishing to remove the asylum-seeker.

Arrangements for allocating responsibility for examining an asylum claim

- ✓ If your government wishes to set up an arrangement to transfer responsibility for examining asylum claims with other States that have comparable protection systems, ensure that appropriate guarantees (as summarized above and set out in more detail in UNHCR's 2013 [Guidance note](#) on the issue) are in place.

Interview and decision-making process at first instance

- ✓ Ensure that each adult asylum-seeker receives a personal interview with a qualified and impartial decision-maker at first instance;
- ✓ Set out the duty of the asylum-seeker to cooperate with the relevant decision-making authority in the process;
- ✓ Specify that the burden of proof is shared between the asylum-seeker and the decision-making authority;
- ✓ The credibility assessment should: take into account the asylum-seeker's individual and contextual circumstances; focus on material facts asserted by the asylum-seeker; and, if doubt remains, the give the asylum-seeker the benefit of the doubt with respect to that particular fact;
- ✓ When assessing whether an asylum-seeker has a well-founded fear of persecution, the persecution must be determined to be reasonably possible.
- ✓ The central asylum authority should provide reliable, accurate, and up-to-date country of origin information to enable decision-makers to assess the claim and to provide initial and ongoing training to ensure decision-makers have the requisite interviewing and decision-making expertise and knowledge of asylum law;
- ✓ All asylum-seekers should receive a written decision, whether on admissibility or the substance of the claim; and
- ✓ If a claim is rejected or declared inadmissible, the central asylum authority should issue a written decision setting out the reasons in fact and in law. The decision maker should inform the asylum-seeker of his or her right to appeal and about the applicable procedures and deadlines to allow an appeal to be prepared and lodged in due time.

Accelerated procedures for examining the substance of a claim

- ✔ Legislation should include provisions setting clearly-defined limits on the kinds of applications that can be considered under these procedures, including the following: they should apply only to applications that are manifestly well-founded, clearly abusive and manifestly unfounded, and not to other categories of claims;
- ✔ The list of applications considered clearly abusive or manifestly unfounded should be limited to that given in Executive Committee [Conclusion No. 30](#);
- ✔ Any time limits for procedural steps should be of a reasonable length so as to permit the asylum-seeker to pursue the claim effectively and to allow the determining authority to conduct a complete examination of the application; and
- ✔ Accelerated procedures should not be used to determine issues, such as exclusion or internal flight alternative, that require a full factual and legal assessment of the merits of the case, nor should they be applied to applications by unaccompanied or separated children, traumatized persons or others who are particularly vulnerable.
- ✔ Where draft legislation and/or implementing regulations contain provisions for channelling asylum-seekers from safe countries of origin into accelerated procedures:
 - ✔ Ensure that each asylum-seeker has an effective opportunity to challenge the presumption of safety in his or her particular case and have the application referred to regular (i.e. non-accelerated) procedures;
 - ✔ Ensure that the procedure for the safety assessment of countries of origin is based on precise, reliable, objective and up-to date information, takes account not only of international instruments ratified and laws enacted but also their implementation in practice, and is responsive to changing circumstances in the country of origin.

Subsequent applications and withdrawal or abandonment of applications

- ✔ If legislation provides for subsequent applications to be subject to accelerated procedures, it should only apply to cases that were fully considered on the merits, and such cases should be subjected to a preliminary examination to assess in the individual case whether new elements have arisen or new evidence has emerged that would warrant examining the substance of the claim.
- ✔ If the question of withdrawal or abandonment of applications is regulated, a withdrawal should result in a discontinuation of the procedure only and in the closing of the file. Any subsequent reopening of the application should be possible without time limits.

Appeals and effective remedy

- ✓ Asylum-seekers whose claims have been rejected at first instance should have access to an effective remedy;
- ✓ The review should be by a court or other independent body and cover both facts and law based on reliable, accurate and up-to-date information;
- ✓ Asylum-seekers must be informed of the procedures for appealing, be allowed reasonable time to apply to have their cases formally reconsidered and not be prohibited from presenting new evidence at the appeals stage;
- ✓ Pending the outcome of the final decision, asylum-seekers should be allowed to remain in the territory; and
- ✓ If suspensive effect is not automatic, this is only for manifestly unfounded or abusive applications as defined in Executive Committee [Conclusion No. 30](#), *res judicata* cases and decisions allocating responsibility for determining an asylum claim on the basis of a bilateral or multilateral agreement and that, even in these cases, there is a possibility to apply for suspensive effect in the individual case.

Asylum-seekers with specific needs in the asylum procedure

- ✓ Legislation should include explicit measures to address the specific needs of particularly vulnerable asylum-seekers including female asylum-seekers, survivors of violence and torture, traumatized persons, LGBTI asylum-seekers and others. Such measures include requirements to provide asylum-seekers with information about the asylum process and procedures, their right to access it, as well as to legal advice in a manner and language that they can understand and that is adapted to their situation, including their age, level of education and any disability; to give female asylum-seekers the opportunity to be interviewed by skilled female interviewers and interpreters; and give family members and dependants of principal applicants the right to make an independent asylum claim and, where appropriate, be recognized as refugees in their own right.
- ✓ In line with Article 22 of the [Convention on the Rights of the Child](#), parliamentarians are encouraged to ensure that legislation:
 - ✓ Addresses the situation of children including separated and unaccompanied children seeking asylum, provides child-sensitive procedural safeguards, and explicitly refers to the principle of the “best interest of the child”;

- ✓ Provides that as soon as an unaccompanied or separated child is identified, an independent, qualified guardian or adviser should be appointed free of charge to assist him or her;
 - ✓ Provides that, at all stages of the asylum process, unaccompanied and separated children have a suitably qualified legal representative to assist them to present their claim for asylum. Legal representatives should be available at no cost to the child; and
 - ✓ Stipulates that age assessment procedures should be carried out only in cases where the child's age is in doubt, that they are part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the child, that they are carried out on a voluntary basis in a child- and gender-sensitive manner by independent professionals with appropriate expertise, and that, in case of doubt, the person should be considered to be a child.
- ✓ Promote the inclusion of a provision stipulating that if the principal applicant meets the criteria of the refugee definition, his or her nuclear family members and other dependants should normally be granted refugee status in accordance with the right to family unity of the recognized refugee, unless the grant of refugee status is incompatible with the personal legal status of the family member or dependant (e.g. a spouse who is a national of the country of asylum).
 - ✓ Ensure that legislation does not prohibit the admission of separate and independent asylum claims by any other family member or dependant after a negative decision is reached in relation to the claim of the principal applicant, particularly in light of the need for awareness of gender-related persecution and child-specific forms of harm.
 - ✓ Allocate sufficient resources to asylum authorities to ensure that specialized training, appropriate country of origin information and other services can be provided, so that decision-making can be undertaken in a way that takes account of the specific needs of particularly vulnerable asylum-seekers and is sensitive to age, gender and diversity.
 - ✓ Call for the asylum authority to issue guidelines as needed, for instance, on procedural safeguards, interviewing techniques and assessment of claims by children, women, victims of torture, traumatized persons, LGBTI asylum-seekers and other vulnerable persons.

Recognition of refugee status

Legislation should provide for recognized refugees to be granted lawful stay in the country and to be issued with identity documents (like asylum-seekers) and with travel documents. To this end, parliamentarians are encouraged to:

- ✔ Ensure with regard to **lawful residency status** that:
 - ✔ Provision is made for an asylum-seeker to be granted a secure legal residency status, preferably permanent residence, upon recognition as a refugee; and that if refugees are not granted permanent residence, they should at minimum be granted a status which will allow them to apply for permanent residence before applying for naturalization.

- ✔ Ensure with regard to **identity documentation** that:
 - ✔ Provision is made for the issuance of individual identity documents certifying their status to both asylum-seekers and refugees. For recognized refugees, this can also be done by issuing all refugees with a travel document according to Article 27 of the [1951 Convention](#);
 - ✔ Such identity documentation is also issued to family members recognized as refugees on the basis of derivative status (or in the case of asylum-seekers, to family members of the principal applicant);
 - ✔ The format used prevents misuse and enables the relevant authorities to be satisfied that the person using the document is in fact the person to whom it has been issued. Best practice dictates that documents issued to refugees should be similar in format and duration to those issued to permanent residents, as this often facilitates access to services and rights.

- ✔ Ensure with regard to **travel documents** that:
 - ✔ Provision is made for the issuance of travel documents to persons recognized as refugees (including on the basis of derivative status) in accordance with Article 28 of the [1951 Convention](#) and the rules governing the issuance, duration and renewal of Convention Travel Documents (CTDs) contained in the Schedule to the [1951 Convention](#);
 - ✔ Any fees charged for issue of the document do not exceed the lowest scale of charges for national passports (see Schedule to the [1951 Convention](#), paragraph 3) – one way of keeping down administration procedures and the cost of producing such travel documents is to issue documents with longer validity; and
 - ✔ National asylum, refugee, immigration and/or citizenship laws are adapted, if this has not yet been done, to ensure refugees lawfully staying in the country are issued with machine-readable travel documents, so as to comply with universally accepted standards and enable refugees to enjoy freedom of movement and travel abroad.

Cancellation and revocation of refugee status

- ✓ Where legislation permits the authorities to consider cancellation of refugee status, parliamentarians are encouraged to ensure that:
 - ✓ The substantive grounds for cancellation are consistent with international refugee law and that the procedure followed respects procedural safeguards as outlined above and considers and takes into account both proportionality considerations and the previously acquired rights of the refugee concerned, including any links the refugee has established in the country; and
 - ✓ A person whose refugee status is cancelled is given access to a procedure for determining whether he or she qualifies for refugee status at the present time, either within the cancellation procedure or in separate proceedings, depending on the legal system in place.
- ✓ Where legislation contains provisions for the revocation of refugee status for persons who have committed certain acts after their recognition as refugees, ensure that such revocation of refugee status is only contemplated where a person engages in conduct which comes within the scope of Article 1F(a) or 1F(c) of the [1951 Convention](#) and does not include acts described under Article 1F(b) or Article 33(2) of the [1951 Convention](#) and that any revocation does not affect the refugee status of family members.
- ✓ Ensure that the legislation requires that the affected individual be informed of the reason for cancellation or revocation of status and provided with an opportunity to challenge the decision, preferably before the authority responsible for the determination of refugee status, with the opportunity for an appeal with suspensive effect to a higher authority.

Cessation of refugee status

- ✓ Since the grounds for cessation enumerated in Article 1C of the [1951 Convention](#) and Article 1, paragraph 4 (a) to (e) of the [1969 OAU Convention](#) are exhaustive, to ensure respect for international legal standards in relation to cessation of refugee status, to retain the exact wording of the cessation clauses of the [1951 Convention](#) and, if applicable, the [1969 OAU Convention](#) and ensure that additional grounds for cessation are not included in legislation.
- ✓ If cessation of refugee status is foreseen on the basis of Article I(4)(g) of the [1969 OAU Convention](#), when a person engages in subversive activities in the sense of Article III(2), to provide that such provisions must be read within the framework of Article 1F of the [1951 Convention](#) and the same standards with respect to these provisions apply.

- ✔ In line with international standards, parliamentarians are further encouraged to:
 - ✔ Ensure that legislation provides for the non-application of the cessation clauses to refugees who are able to invoke compelling reasons arising out of previous persecution for refusing to return to their country of nationality or former habitual residence.
 - ✔ Ensure that the second paragraph of Article 1C(5) and 1C(6) of the [1951 Convention](#), referring to “compelling reasons” is also applied to Article 1A(2) refugees, as this is a general humanitarian principle that is now well-grounded in State practice.
 - ✔ Ensure that legislation requires that each affected individual be informed of the reason for cessation of status and provides an opportunity for him or her to challenge the decision, preferably before the authority responsible for the determination of refugee status, with the opportunity for an appeal with suspensive effect to a higher authority.
 - ✔ If domestic legislation provides for grounds for cessation of complementary forms of protection, ensure that these provisions essentially follow the parameters of Article 1C of the [1951 Convention](#), including as regards the “compelling reasons” exception of Article 1C(5) and (6) of the [1951 Convention](#), which are equally applied to the cessation of complementary protection.
 - ✔ Advocate that legislation contains provisions requiring authorities to consult with UNHCR when considering the application of cessation clauses.

Return of persons found not to be in need of international protection

- ✔ Support the preference of voluntary over forced return of persons found not to be in need of international protection in a fair procedure in a final decision and where there are no compelling humanitarian reasons to stay, including by ensuring the provision of information and counselling on return options and circumstances in the country of origin to such persons; allocating funding to provide transportation assistance, reintegration assistance, and post-return assistance and monitoring.
- ✔ In order to ensure returns respect the principle of *non-refoulement*, support the inclusion in legislation of appropriate safeguards for assessing new or unexamined risks, whether this involves re-referral to the asylum procedure or the establishment of a separate process for the examination of these risks as part of the return procedure.
- ✔ In order to ensure the specific needs of persons facing return are properly taken into account, ensure legislation provides for the evaluation of such needs and that if appropriately adapted assistance is not available the return should not go ahead.

- ✔ Promote the inclusion in readmission agreements of provisions requiring their implementation in line with international refugee law and international human rights law, including notably an explicit statement that their implementation is subject to respect for the principle of *non-refoulement* and that they do not apply to asylum-seekers. Every person for whom return is proposed should be individually assessed as to the legality and appropriateness of readmission, having regard to the principle of family unity, the specific needs of the individual concerned, and the need to ensure that the best interest of the child is a primary consideration. Such agreements should also contain procedural safeguards, including clear instructions to border guards and the provision of access to interpreters at borders.
- ✔ Where voluntary return of persons found not to be in need of international protection following a fair procedure and a final decision is not possible and forced return is proposed, ensure that the safeguards outlined above are in place and respected.
- ✔ Encourage monitoring of the readmission of those returned to ensure that this is carried out in a humane, dignified and orderly manner.

Chapter 7 – Respecting the rights and dignity of refugees

The obligations of refugees

- ✓ Parliamentarians are encouraged to support the inclusion in legislation of a provision requiring every refugee to conform to the laws and regulations of the host country, as set out in Article 2 of the [1951 Convention](#).

The right to freedom of movement

- ✓ Favour an approach that permits refugees to choose their place of residence and to move freely within the territory.
- ✓ When considering the establishment of refugee camps or designated areas or settlements, take into account whether such an approach facilitates refugees' enjoyment of their rights, including their security.
- ✓ If refugees are assigned to **camps or settlements**:
 - ✓ Ensure that these are located at a reasonable distance from the border, that law and order is maintained, that any flow of arms into refugee camps and settlements is curtailed, that their use for the internment of prisoners of war is prevented, that armed elements are disarmed and that combatants are identified, separated and interned;
 - ✓ Advocate for measures to ensure refugees' physical and material security, to enable refugee families to reunite, to enable refugees to obtain medical care, to provide them with secondary and tertiary education and training opportunities, and to strengthen access to livelihoods; and
 - ✓ Support refugees' freedom of movement, in particular to enable them to access rights and services, and work to end encampment policies where freedom of movement is restricted.

- ✔ Where refugees are living in **outside of camps**:
 - ✔ Allocate resources to ensure effective and accurate registration and documentation of refugees;
 - ✔ Support initiatives to bring together ministries responsible for key services, such as health, education and social welfare, and authorities at the national, municipal and neighbourhood level to enhance awareness of refugees' needs and rights, coordinate initiatives, and to strengthen safety and security for all in urban communities hosting refugees, and to ensure that support is provided both to host communities and refugees; and
 - ✔ Support initiatives and partnerships with civil society organizations that have expertise related to livelihoods, such as chambers of commerce, street vendors' associations, and neighbourhood groups, to enhance livelihood and self-reliance opportunities for refugees and host communities.

The right to family unity

Legislators can work to protect the unity of refugee families by:

- ✔ Ensuring that the right to family unity, including of refugees admitted temporarily to the territory, is recognized in legislation;
- ✔ Advocating for an interpretation of what constitutes a family to include not only legally married spouses and their minor children, but also other customary and common law couples forming a genuine and stable family unit, and other persons with whom there is a relationship of social, economic or emotional dependency;
- ✔ Ensuring that refugee status is not affected by a change in family status or by the marriage, divorce or legal separation of a family member, the death of the head of family, or attainment of the age of majority, unless one of the cessation clauses applies;
- ✔ Ensuring that legislation allows recognized refugees to be joined in the country of asylum by their family members, who should be given the same residence rights as those accorded to the principal applicant. Legislation should provide for an effective remedy against decisions denying applications for family reunification;
- ✔ Ensuring that neither legislation nor practice requires refugees to return to their country of origin to initiate family reunification procedures;
- ✔ Enabling separated refugee families to be reunited quickly, including by not requiring refugees to reside for a certain period of time in the host country before being entitled to bring their families, and by advocating for family reunion applications to be dealt with in a positive and expeditious manner (Article 10 of the [Convention on the Rights of the Child](#));

- ✔ Exempting refugees from requirements to demonstrate their ability to provide support for family members, such as evidence of adequate accommodation, sickness insurance and economic resources;
- ✔ Adopting flexible means of proof of family relationship, allowing alternative means of proof where documentary evidence is not available and discouraging systematic use of DNA testing to prove relationships;
- ✔ Where DNA testing is used to confirm blood relationships, following the guidance provided in [UNHCR's Note on DNA testing to establish family relationships in the refugee context](#); and
- ✔ Providing for the tracing of family members, particularly of unaccompanied and separated children, when it is in the child's best interests.

The right to work

- ✔ Support legislation assuring recognized refugees are treated on the same basis as nationals as regards wage-earning employment, self-employment and the exercise of liberal professions. Failing that, promote equal treatment at least for wage-earning employment and self-employment as per Articles 17 and 18 of the [1951 Convention](#).
- ✔ Support measures to ensure recognition of foreign academic, professional and vocational credentials, as well as fee waivers and other assistance for tests that enable professional recognition where credentials are not accepted.
- ✔ In order to assess fairly and expeditiously whether refugees fulfil relevant requirements for employment, encourage the use of flexible measures, such as provisional recognition of qualifications on the basis of a sworn statement or special examinations to check the qualifications refugees claim to have acquired.
- ✔ Support refugee access to vocational and language training, to facilitate access to employment.

The right to education

- ✔ Ensure primary education is free and compulsory for all children, as required by Article 28 of the [Convention on the Rights of the Child](#), regardless of their legal status.
- ✔ Support initiatives to ensure safe school environments and enhance the enrolment and retention of refugee girls and boys.

- ✔ As regards access to secondary and tertiary education, advocate for refugees to be treated the same way as nationals, particularly with regard to fees. At a minimum, as provided for under Article 22 of the [1951 Convention](#), refugees should be treated in the same way as other lawfully residing foreigners.
- ✔ In order to assess fairly and expeditiously whether refugees meet the requirements for higher education, support flexible measures, such as provisional recognition of educational credentials on the basis of a sworn statement or special examinations.

Access to courts

- ✔ Make sure that legislation guarantees refugees have access to courts (Article 16, [1951 Convention](#)); provides them with necessary support such as interpretation and translation facilities, payment or waiver of costs and fees; and provides for free legal support for refugees, where this is available to nationals.
- ✔ Support initiatives to raise awareness among refugee populations of the remedies available if their rights are violated, including in cases of sexual and gender-based violence (SGBV) and other violations of women's and children's rights.
- ✔ Support initiatives to strengthen the non-discriminatory operation of law enforcement and formal and informal or customary justice mechanisms.

Right to social welfare and healthcare

- ✔ Lobby for legislation that grants refugees lawfully staying in the country the same treatment as nationals with regard to **social security**, such as sick leave, maternity, disability, unemployment, and pension schemes (Article 24 (1), [1951 Convention](#)).
- ✔ Advocate for legislation that gives refugees lawfully staying in the country the same access to **public relief and assistance**, including medical insurance, as nationals (Article 23, [1951 Convention](#)), if this is not already the case.

Other rights

- ✔ While legislation may restrict the **political rights of refugees**, parliamentarians are encouraged to ensure that treatment is on the most favourable basis accorded to foreign nationals as regards the right to join non-political and non-profit associations and trade unions (Article 15, [1951 Convention](#)).
- ✔ If refugees wish to **participate in elections** in their country of origin, support measures to ensure that such participation is based on their free and informed consent with respect for confidentiality and without coercion; that obstacles to registration and participation are removed; and that such participation is not viewed as re-avilment of national protection and does not result in loss of refugee status.
- ✔ Support legislation that permits refugees to own **movable and immovable property** on the same basis as foreigners (Article 13, [1951 Convention](#)) or even nationals.
- ✔ When the scope of **national child protection legislation** is defined, promote the access of all refugee children to national child protection systems.

Rights and benefits of persons with complementary forms of protection

- ✔ Support legislation providing for the alignment of the rights and benefits of persons with complementary forms of protection with those of refugees, including: the issuance of travel documentation to such persons and their family members if they are unable to obtain a national passport; access to the labour market, integration support and social benefits; and family reunification rights.

Tackling racism and xenophobia

- ✔ Ensure the adoption and implementation of legislation aimed at combating racism, racial discrimination, xenophobia and related intolerance, including against refugees. Such legislation should criminalize racist and xenophobic acts, as well as incitement to all forms of hatred, including hate speech.
- ✔ Consult [General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination](#) and consider which of the measures it recommends States take to prevent discrimination based on citizenship or immigration status are particularly relevant to the national context, and lobby for the adoption of these measures.

- ✔ Support the adoption and implementation of policies aimed at promoting the positive aspects of a diverse society, as well as interaction between refugees, the local population, and civil society.
- ✔ Promote the development of a national action plan to combat racism, racial discrimination, xenophobia and related intolerance, monitor its implementation in consultation with relevant stakeholders and establish national programmes that facilitate the access of all, without discrimination, to basic social services.
- ✔ Ensure that perpetrators of racist and xenophobic violence are effectively and openly condemned through courts of law, human rights commissions and ombudsmen's offices and in parliamentary discourse.

Engagement with human rights mechanisms

- ✔ Work to ensure parliament's active engagement in the UPR and the inclusion of issues relevant to the protection of asylum-seekers and refugees in the preparation and approval of national reports for the UPR or other UN human rights mechanisms. Relevant issues include accession to the [1951 Convention/1967 Protocol](#); reform of national legislation on asylum; reception conditions; access to quality refugee status determination procedures, to legal assistance, to documentation and other rights; detention; freedom of movement; the situation of persons with specific needs; and racial discrimination.
- ✔ Provide information to Special Rapporteurs or Working Groups looking into the situation of refugees and asylum-seekers and issues that may affect them. Follow up on any recommendations where parliamentary action is called for.
- ✔ Request the relevant special procedure(s) to intervene when an individual or group is about to be sent back to a country in violation of the principle of *non-refoulement* or is arbitrarily detained.
- ✔ Urge your government to follow up on requests for information or urgent appeals issued under the special procedures.
- ✔ Take note of UPR recommendations and Concluding Observations and General Comments of treaty monitoring body reports that concern asylum-seekers and refugees and advocate in favour of the actions recommended in them.

Chapter 9 – Securing durable solutions

Voluntary repatriation

In both countries of asylum and of origin:

- ✓ At an early stage, identify and resolve any legal and administrative obstacles to voluntary repatriation and to returnees' comprehensive enjoyment of their rights.
- ✓ Support the conclusion of a tripartite agreement involving the country of asylum, country of origin and UNHCR to provide a framework for repatriation that is voluntary, can be carried out in safety and dignity, and will be sustainable. Such an agreement should set out the modalities of voluntary repatriation, the roles and responsibilities of the relevant actors, and the obligations of States with respect to returning refugees.
- ✓ Ensure that repatriation arrangements respect family unity during and after return including, where necessary, by providing for spouses and family members of different nationalities to remain together as families.
- ✓ Ensure that repatriation arrangements identify and address the specific needs of returning refugees – including women, children, older people, persons with disabilities and others with special concerns.
- ✓ Ensure that unaccompanied or separated children do not return unless they are returning to family members or other specific and adequate reception and care arrangements have been put in place. Make sure that family tracing is accomplished prior to return.
- ✓ Recognize the complex challenges of reconciliation in post-conflict situations, and support the use, if necessary, of transitional justice mechanisms to help create conditions conducive to voluntary repatriation and sustainable reintegration.

In the country of asylum:

- ✔ To enable each refugee to make a free and informed decision about return, make sure that complete, reliable and accurate information on the situation in the country of origin is available to refugees, including on physical, material and legal safety issues. Encourage the authorities to allow refugee representatives to make “go-and-see” visits to potential places of return.
- ✔ Ensure that measures are in place to protect refugees from threats and harassment from anyone seeking to impede their right to return.

In the country of origin:

- ✔ Ensure that the government recognizes its obligation to readmit its nationals, and facilitates their return in practice, including by issuing travel documents as required. Make sure that refugees who are non-nationals but who were habitually resident in the country are also accepted back, including stateless persons.
- ✔ Support measures to encourage voluntary repatriation, including assurances that returning refugees will not face prosecution for having left the country. However, no such amnesty should extend to returning refugees who are charged with a serious violation of international humanitarian law, international human rights law, or a common crime involving death or serious bodily harm, whether committed before or during exile.
- ✔ Ensure that national legislation recognizes the civil status of returning refugees, including changes that occurred during exile (births, deaths, adoptions, marriages and divorces) and documentation attesting to civil status that were issued by competent bodies in the country of asylum or elsewhere. Legislation should take into account the special situation of returning refugee women who may not have documentation proving their civil status.
- ✔ Support the establishment of restitution mechanisms to enable returning refugees to recover any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile. Ensure that returning women are not prevented from securing their property rights. Advocate for just and adequate compensation if property cannot be restored, and for the situation of persons who may be occupying refugee properties to be taken into account.
- ✔ Ensure that repatriation arrangements provide homeless returning refugees, as appropriate, with access to land and/or adequate housing, comparable to local standards.
- ✔ Ensure that repatriation arrangements recognize the equivalency of primary and secondary education received abroad and provide non-discriminatory access for returning refugees to procedures to recognize the equivalency of academic and professional qualifications acquired abroad.

- ✔ Ensure that UNHCR has free and unhindered access to returning refugees, to be able to monitor their treatment in accordance with international standards.

In donor countries:

- ✔ Encourage financial and technical assistance be provided to countries to which refugees are returning, in particular countries emerging from conflict. Support can be provided to the full range of initiatives needed for successful repatriation, from de-mining programmes to income-generating projects to long-term development activities.

Local integration

- ✔ Ensure that legislation provides for the timely grant of a secure legal status for recognized refugees. Ideally this would mean permanent residency is provided immediately or, at the latest, following expiry of an initial permit.
- ✔ In the spirit of Article 34 of the [1951 Convention](#), support the enactment of other measures to facilitate the integration and eventual naturalization of refugees in the host State.
- ✔ Support the **legal dimension** of integration by:
 - ✔ Encouraging the use of the [1951 Convention and its 1967 Protocol](#) and relevant human rights instruments as a framework to guide the integration process; and
 - ✔ Advocating as needed for the adaptation and revision of national legal and administrative frameworks in order to promote refugees' equal enjoyment of rights and services.
 - ✔ Ensuring that legislation and policies respect refugees' fundamental civil, economic and social rights, including freedom of movement and the right to engage in income-generating activities;
 - ✔ Where national legislation provides for sanctions for non-fulfilment of integration obligations, such as the withdrawal of residence permits for failure to pass language tests, ensure that such sanctions are not applied to refugees, as these could undermine refugee rights.

- ✔ Promote the **economic dimension** of integration by:
 - ✔ Encouraging consideration of ways to facilitate the active participation of refugees in the economic life of the country, including through education and skills development;
 - ✔ Examining existing laws and practices with a view to identifying and removing obstacles to refugee employment;
 - ✔ Facilitate refugees' access to agricultural land where appropriate, foster opportunities for self-reliance and enhance the food security of refugees and the local population.
 - ✔ Advocating for arrangements to recognize academic, professional and vocational diplomas and certificates acquired by refugees in their country of origin;
 - ✔ Ensuring that refugee-hosting areas are included in national development plans.

- ✔ Support the **social and cultural dimension** of local integration by:
 - ✔ Supporting anti-discrimination policies and actions aimed at combating discrimination and promoting the positive aspects of a diverse society;
 - ✔ Advocating for legislation and policies that allow refugees to participate fully in the civic, economic, and social and cultural life of the host country;
 - ✔ Encouraging access to education for refugees, including adult education, as well as vocational training;
 - ✔ Encouraging the facilitation of refugee family reunification, in recognition of the fact that the presence of family members can reinforce the social support system of refugees and in so doing, promote the integration of refugee families.

Resettlement

If your country already participates in resettlement, parliamentarians are encouraged to:

- ✔ Ensure that procedures, policies and programmes in resettlement countries are developed and implemented to provide an effective framework supporting resettlement that permits resettled refugees to become self-reliant, integrate, and find stability.
- ✔ Advocate for resettlement criteria to be based on protection needs rather than on integration potential, so that those most at risk can find safety and security. Discourage use of selection criteria that may be seen as discriminatory, such as race, religion, level of education, language or other skills.
- ✔ Advocate for an increase in the number of resettlement places made available, commensurate with current needs and in recognition of the importance of resettlement for protection, durable solutions and responsibility-sharing.

- ✓ Encourage making emergency or urgent resettlement places available for refugees who are threatened with *refoulement* or whose physical safety is otherwise seriously jeopardized in the country where they have sought refuge.

If your country does not yet engage in refugee resettlement, parliamentarians can:

- ✓ Encourage discussion about setting up a resettlement programme, and consider starting with a pilot programme.
- ✓ Promote exchanges of information and experience with countries that have well-established resettlement schemes.

Innovative approaches to resettlement and other migration channels

- ✓ Encourage the development of mechanisms for private sponsorship of refugees for resettlement.
- ✓ Consider using humanitarian admission schemes as a flexible way of responding to urgent needs in particular situations, such as large-scale displacement, although such schemes should not affect existing resettlement programmes.
- ✓ Support the use of other forms of admission and settlement for refugees, including humanitarian visas, family reunification, and study channels.
- ✓ Where labour migration programmes exist, seek to make these accessible to refugees.
- ✓ Where regional frameworks permit labour mobility between States, ensure that refugees are able to benefit from such initiatives.

Naturalization

- ✓ Support the enactment of provisions to facilitate refugees' acquisition of citizenship in your country, for example by:
 - ✓ Reducing, for refugees, the period of required residence and lowering the fees and costs of naturalization proceedings;
 - ✓ Applying less-stringent language, literacy and civic knowledge requirements;
 - ✓ Waiving any requirement to renounce another nationality if it would not be possible for a refugee to meet that requirement;

- ✓ Taking account of any other obstacles to naturalization that refugees may face, in view of their particular situation.

Protracted refugee situations

In countries of origin:

- ✓ Appeal to the government to demonstrate clear political will to end the protracted displacement of its citizens.
- ✓ Explore and advocate for measures to enable refugees to return home without fear of reprisal or harm, and to regain their rights as citizens.
- ✓ Support social and economic measures to ensure that the return of refugees will be sustainable and to encourage their reintegration.

In countries of asylum:

- ✓ Support measures to promote the self-sufficiency of refugees, thereby making an investment in future durable solutions.
- ✓ Support local integration where possible and in a manner that takes into account the needs and views of hosting communities and refugees.


In countries of resettlement and donor countries:


- ✓ Support the strategic use of resettlement as a tool of burden and responsibility sharing and explore more flexible approaches consistent with national legislation and regulations to bridge gaps which may exist between national resettlement criteria and the specific needs and situation of refugees in protracted situations.
- ✓ Support the provision of humanitarian and development assistance and other forms of support to countries where voluntary repatriation is foreseeable or taking place.
- ✓ Where local integration is appropriate and feasible, provide financial assistance and other forms of support, including development assistance, for the benefit of refugees and the communities hosting them. Also mobilize support for rehabilitation of refugee-impacted areas in the host country from which refugees have returned.



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