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6 DIFFERENTIATED PROCESSES AND PROCEDURES

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INTRODUCTION

The 10-Point Plan recommends the establishment of differentiated processes and procedures for various categories of persons travelling as part of mixed movements. This allows tailored and appropriate responses to be provided according to the respective needs and profiles of the persons involved.

The range of procedures that can be made available in any situation of mixed movement depends on the profile and numbers of arrivals, the legal framework and socio-economic capacity of the host country, and the support of the international community. Procedures can include the following:

- Asylum procedures for persons seeking international protection;
- Special protection mechanisms for victims of trafficking;
- Child protection systems;
- Family tracing;
- Procedures to identify women and girls at heightened risk;
- Support for persons with physical and mental disabilities, individuals who have experienced torture or trauma, and elderly persons;
- Avenues for regularization in the host country or migration options that facilitate the onward movement of persons in search of economic opportunities and those who wish to join their families abroad;
- Assisted voluntary return for those who are neither in need of international protection nor have compelling humanitarian reasons to stay in the host country and who wish to return to their countries of origin; and
- Compulsory return for persons without international protection needs as a measure of last resort.

The objectives and outcomes of these procedures differ; not all are geared towards legalizing a person's stay in the host country. As this list suggests, positive outcomes cannot be provided to meet every person's aspirations. However, establishing alternative procedures, in addition to asylum procedures or return, can assist authorities to manage mixed movements fairly, address any immediate needs of arrivals and facilitate longer-term solutions. From a protection perspective, the capacity to identify specific needs and to direct individuals who are not seeking international protection to alternative mechanisms can contribute to more effective and efficient asylum procedures.

As mentioned in Chapter 5, while the categorization of different groups of people can be a useful tool to ensure that responses to mixed movements are more effectively targeted, categorization is not an end in itself. Persons travelling within mixed movements may have multiple needs and fit into several categories. For example, victims of trafficking and unaccompanied or separated children may also need international protection. In such cases, asylum procedures can be conducted alongside other processes, including support and services to meet immediate needs. New categories of needs may also arise after arrival. For these reasons, it is appropriate for responses ultimately to be informed by a person's individual needs, rather than according to their categorization. Establishing well-functioning referral systems between different processes and coordination mechanisms between all relevant actors (e.g. government agencies, NGOs, international organizations, legal advisors, social workers, health care providers) will increase the likelihood that the most appropriate outcome is provided for each individual. Irrespective of the category or categories into which a person falls, every person is entitled to be treated in a humane and dignified manner, consistent with international human rights standards.

This chapter provides examples of a number of procedures, including asylum processes and procedures to identify the needs of children, women at heightened risk and victims of trafficking. The asylum examples focus on State procedures but also include UNHCR's own refugee status determination (RSD) mechanisms. The processes and procedures presented are not exhaustive. Additional mechanisms may exist in some countries.

Mechanisms to address immediate medical and psychosocial needs, which are generally components of reception arrangements, are outlined in Chapter 4. Longer-term solutions, including local integration, legal onward movement and return are outlined in Chapters 7, 8 and 9 respectively.

OPERATIONALIZING DIFFERENTIATED PROCESSES AND PROCEDURES: SUGGESTIONS FOR STAKEHOLDERS AND SUPPORT UNHCR CAN PROVIDE TO PARTNERS



SUGGESTIONS FOR STAKEHOLDERS

- Encourage and facilitate the development of legal and policy frameworks for the protection of refugees, children, women and girls at heightened risk, victims of trafficking, and other persons with specific needs.
- Develop specific child protection systems; conduct a best interests determination as soon as possible to ensure that all action taken is in the child's best interests.
- Develop family tracing mechanisms with a particular focus on unaccompanied children.
- Develop procedures for identifying women and girls at risk, and address their specific protection needs.
- Identify victims of trafficking, and establish a coordinated system to assess their international protection needs.
- Develop case management and procedural tools to increase the efficiency of the asylum process by, for example, undertaking caseload analysis, analysing country of origin information and developing suitable accelerated procedures with full respect for the principle of *non-refoulement*.
- Ensure that all processes and procedures are sensitive to age, gender and diversity.
- Establish mechanisms for coordination between different stakeholders and for cross-referral between processes and procedures.



SUPPORT UNHCR CAN PROVIDE TO PARTNERS

- Raise awareness about the protection needs of different categories of persons travelling as part of mixed movements.
- Support States, other international organizations and relevant NGOs in establishing or strengthening differentiated processes and procedures.
- Provide advice and support on asylum procedures, consistent with its supervisory role under Article 35 of the 1951 Convention (on an ad hoc basis or through a formal consultative processes).
- Develop, together with relevant partners, standard operating procedures to enhance cooperation and coordination.
- Identify and protect refugees, children of concern, victims of trafficking, women and girls at heightened risk, and other persons with specific needs where UNHCR is undertaking screening and RSD.
- Assist with the development of case management tools, and support asylum procedures in emergency and large-scale influx situations.



A child during informal educational activities provided at an open accommodation site in Greece, where UNHCR distributed 130 school bags with stationary as part of a series of small-scale, community-based projects.
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6.1 Child protection systems

Children make up a significant proportion of those travelling as part of mixed movements and are often exposed to a wide range of protection risks.

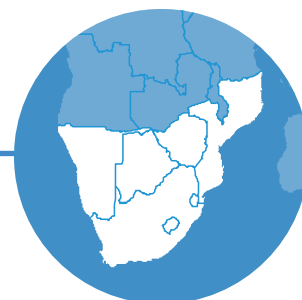
A comprehensive child protection system consists of laws and policies, coordination structures, preventative and responsive services, knowledge and data, human and financial capacities and advocacy and awareness raising that are designed to mitigate risks and respond to the specific needs of children and prevent child abuse, neglect, exploitation, violence and discriminatory access to services. Instead of treating separately each category or form of risk for children (e.g. child trafficking or separation from family members), an effective child protection system considers the situation of a particular child and the interrelated actions that can be undertaken by communities, national and international actors in a holistic and comprehensive manner in order to protect that child. It is important that the various elements of the child protection system operate in a complementary way and are coordinated across a range of sectors.

National child protection systems are most effective when they allow for the non-discriminatory access of all children within the jurisdiction of a State – including victims of trafficking, refugee and stateless children. Relevant processes and procedures can include a range of mechanisms. Mechanisms may identify children at risk traveling as part of mixed movements, address each child's immediate needs, and ensure the appointment

of a legal representative and/or guardian for unaccompanied and separated children. They may ensure age assessment (only where necessary), procedures that are child friendly, provision of information on asylum procedures in a child-friendly manner, processes for children to report protection risks and seek support, family tracing and identification of solutions based on best interests determinations in coordination with relevant actors. Child-friendly interviews conducted by experienced staff can, among other things, help to identify possible cases of children at risk, including trafficked children, and facilitate family tracing and reunification where it is in the best interests of the child. Child-friendly interviews and procedures should also be used to inform children of their rights, including the right to seek asylum. Coordination and referrals between the child protection system and asylum procedures are important to ensure that the international protection needs of children are recognized and appropriate responses and solutions identified and implemented.

2014–PRESENT

South Africa: Improving child protection case management through enhanced cooperation between stakeholders



A Background and rationale

In December 2014, UNHCR convened a child protection conference in South Africa bringing together key Government and non-governmental stakeholders to develop strategies and recommendations for strengthening the care and protection of migrant, refugee and asylum-seeking children at heightened risk, including unaccompanied or separated children. Based on the recommendations, a UNHCR-led child protection working group was established as a broader collaborative forum for these stakeholders.

In addition, in 2015, UNHCR facilitated the establishment of a national steering committee (NSC) on unaccompanied or separated children to collaboratively assess the current challenges and risks faced by these children and design a coordinated response. The NSC works in close partnership with UNHCR, IOM and non-governmental organizations (NGOs) including Save the Children and Lawyers for Human Rights.

B Actors

- UNHCR
- UNICEF
- IOM
- NGOs including Save the Children and Lawyers for Human Rights
- South African Government agencies: Department of Social Development, Department of Justice and Constitutional Development, Department of International Relations and Cooperation, Department of Basic Education, Department of Health and Department of Home Affairs
- South African Police Services

C Actions

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- The key objective of the NSC is to strengthen the national child protection system and ensure non-discriminatory access to services for unaccompanied or separated children. To this end, the NSC seeks to remove barriers that prevent children from accessing social services and attaining durable solutions in their best interests. Further, the NSC supports strategy and policy development, as well as strengthened data collection for decision making.
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- The NSC is responsible for the development and coordination of programmes to increase the protection of unaccompanied or separated children, for instance, through the establishment of interdepartmental protocols and the development of referral pathways for the case management of unaccompanied or separated children.
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- As part of the programme development process, the NSC conducted a mapping exercise of actors, services and structures of the national child protection system to gather information and identify gaps. This research was finalized in March 2016, providing a comprehensive picture of the current child protection system. It analysed the effectiveness of the child protection system and identified gaps and required follow-up actions to strengthen the protection of unaccompanied and separated children.
-
- In March 2016, the NSC hosted a three-day strategic workshop, which was attended by relevant stakeholders, to review the research findings and identify key priorities in relation to both short- and long-term actions to be undertaken by each actor to address current challenges and risks faced by unaccompanied or separated children. A draft cross-sectorial strategy for the protection of unaccompanied or separated children was developed.
-
- This roadmap planning workshop initiated the process of developing an interdepartmental protocol aimed at streamlining the process of care for unaccompanied or separated children, ensuring minimum case management standards and strengthening access for these children to the national system.
-
- A UNHCR-led child protection working group involving key humanitarian partners was established. It fosters collaboration with partner organizations such as IOM, UNICEF and Save the Children. The child protection working group is kept informed of the work of the NSC.

D Review

The NSC provides an example of a child protection mechanism initiated by UNHCR, but fully taken over by government, thereby guaranteeing sustainability and ownership. Efforts directed towards the inclusion of unaccompanied or separated children in the national child protection systems are in line with UNHCR policy to ensure non-discriminatory access for all children. The NSC is now led by the Department of Social Development, the agency with primary responsibility for the protection of all children falling within the jurisdiction of South Africa.

The mapping exercise produced concrete recommendations to improve service delivery and protection to unaccompanied or separated children and provides an important evidence base for policy formulation. A key achievement to date is that, based on the evidence generated by the system mapping report, it was agreed between departments to establish an interdepartmental protocol setting out cross-sectorial guidelines on the process of care for unaccompanied or separated children, to be implemented in 2017.



Europe: “Safe & sound: What States can do to ensure respect for the best interests of unaccompanied and separated children”

The high number of unaccompanied and separated children arriving or moving internally in Europe in recent years poses challenges for States. These include pressures on resources to provide new arrivals with appropriate care and support, trace families and determine children’s best interests, including finding durable solutions. The situation challenges States as they endeavour to honour their commitments under the Convention on the Rights of the Child, the European Union (EU) Charter of Fundamental Rights, and EU directives and regulations.

“Safe & sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe”, a joint UNHCR-UNICEF publication, aims to support States in the EU and European Free Trade Association in applying the best interests principle as a primary consideration when dealing with unaccompanied or separated children in their territory. It offers practical suggestions in the following areas:

- Arrival and preliminary identification;
- Access to territory and identification;
- Registration and documentation;
- Referral to State child protection services;
- Process planning;
- Applying the best interests principle in asylum and immigration procedures;
- Identifying a durable solution; and
- Monitoring.

“Safe & sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe” is available at: <http://www.refworld.org/pdfid/5423da264.pdf>.





Sudan: Alternative care arrangements for unaccompanied and separated children through an urban foster care programme

A Background and rationale

With the increase in movement of unaccompanied or separated children in the urban context in Khartoum, UNHCR worked with the Eritrean and Ethiopian communities in Sudan to establish alternative care arrangements to provide support to unaccompanied or separated children who are not able to access appropriate Government services. The children are mainly from Eritrea, and the majority arrive in Khartoum with the intention of continuing to move onwards to North Africa and Europe.

Many unaccompanied or separated children are able to find accommodation with relatives or acquaintances, but a solution was still needed for children who were not able to access appropriate care options. In response to this problem and as a result of a participatory workshop with caregivers and children held in June 2014, UNHCR developed guidelines for alternative care arrangements. Amongst other standardized procedures, the guidelines supported a cash-based assistance programme whereby children and caregivers visit UNHCR's office on a monthly basis to receive their assistance and report on or seek support for any concerns they may have.

B Actors

- UNHCR
- Child protection voluntary social workers
- Community members and leaders

C Actions

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- UNHCR engaged community members in order to support alternative care arrangements for unaccompanied or separated children. Four refugee volunteer social workers from the Eritrean and Ethiopian communities assist with the identification of appropriate foster families within the refugee community. Once a family has been identified by the social workers, volunteers counsel the family with regards to care arrangements and explain rights and responsibilities. The programme provides foster families with monthly financial assistance to cover any additional expenses incurred, the amount varying depending on the number of children fostered.
-
- Once an appropriate match has been established, and the family has received counselling on rights and responsibilities, the child and foster family meet each other at the UNHCR office. They are counselled on the voluntary nature of the arrangement and on expectations and the ongoing support that UNHCR and the community social workers will provide. After the initial meeting and discussion, the family signs an agreement based on the guidelines for alternative care arrangements, which outlines the duties and responsibilities of the foster family.
-
- Unaccompanied or separated children are encouraged to be active in this process. A child may identify a family in the community with whom to enter a fostering arrangement. Building care arrangements through this channel can be beneficial, as the child has a pre-established relationship with the family.

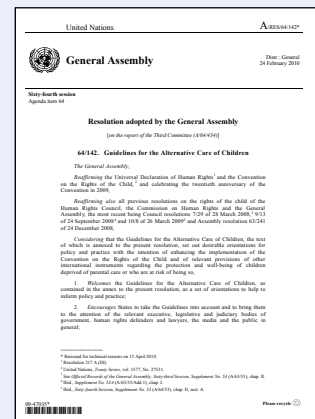
The foster care model has enhanced the possibility of unaccompanied or separated children living in safe family environments. Over 200 unaccompanied or separated children have benefited from these foster care arrangements. A number of safeguards have proven vital to ensure that children are in appropriate care. It is essential that a child feels a part of the family and is aware that a caseworker is available to help address any concerns. The use of the guidelines for alternative care arrangements to explain foster family duties and responsibilities as well as case worker mediation during the initial phase of the care arrangement have proven particularly helpful in establishing relationships of trust.

ADDITIONAL INFORMATION ON ALTERNATIVE CARE ARRANGEMENTS

United Nations General Assembly resolution 64/142, "Guidelines for the alternative care of children", 24 February 2010

The Guidelines outline general principles pertaining to the child and the family, and set out principles and considerations for decisions concerning alternative care. In addition, they propose measures to promote the application of alternative care arrangements and highlight the responsibility of States to ensure the implementation of the Guidelines where possible and to request assistance from the international community where necessary.

Resolution 64/142 is available at: <http://www.refworld.org/docid/4c3acd162.html>.



"Child protection issue brief: Alternative care", 2014

This issue brief outlines different types of alternative care arrangements, UNHCR's role as well as key actions for UNHCR and partner organizations to take. Key messages are:

- The best interests of the child should guide any decision as to alternative care arrangements.
- Residential or institutional care should always be a last resort and only considered when family-based care arrangements are not possible or family-based care is not in the best interests of the child.
- Alternative care should build on existing community care systems.
- Clear standards and procedures are vital to ensuring that alternative care arrangements protect children and do not cause harm.
- Actors must be aware of existing national legal frameworks for children.
- Alternative care should be viewed as an interim measure whilst family tracing is carried out and until the time when children can be reunited with family members.

The issue brief is available at: <http://www.refworld.org/pdfid/52f0e4f34.pdf>.





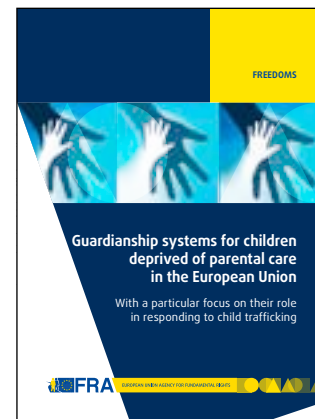
European Union: Guardianship systems for children deprived of parental care

The EU Agency for Fundamental Rights (FRA) published a report and a handbook on guardianship systems for children deprived of parental care in the European Union.

- **The report**, “Guardianship systems for children deprived of parental care in the European Union”, explores the key features of guardianship systems put in place to cater to all children in need of protection, including those at risk of becoming victims of trafficking or of other forms of exploitation. The research covers four specific areas: the type of guardianship systems in place, the profile of appointed guardians, the appointment procedures and the tasks of the guardians. Based on a comparative approach, the report seeks to highlight the strengths and weaknesses of national guardianship systems and assist decision makers in taking measures to promote the effective protection of all children.
- **The handbook**, “Guardianship for children deprived of parental care”, a joint publication of the European Commission and the FRA, is designed to help standardize guardianship practice, ensuring also that these bodies are better equipped to deal with the specific needs of child victims of trafficking. The handbook provides guidance and recommendations to EU Member States on strengthening their guardianship systems, setting forth the core principles, fundamental design and management of such systems. By promoting a shared understanding of the main features of a guardianship system, it aims to improve conditions for children under guardianship and promote respect for their fundamental rights.

The handbook is available from the FRA at:
<http://goo.gl/Ytfu4O>.

The report is available from the FRA at:
<http://goo.gl/hfpwsi>.



UNHCR: Guidance and tools for child protection

“A FRAMEWORK FOR THE PROTECTION OF CHILDREN” (2012)

The Framework is UNHCR’s key strategy document on child protection, articulating six goals that encapsulate UNHCR’s commitment to protect and realize the rights of children, and offering practical guidance on how to achieve them within a child protection systems approach.

As a useful feature, the Framework outlines a three-step guide to designing a comprehensive child protection programme: mapping and analysing existing information, prioritizing and planning in coordination with partners, and monitoring and evaluating to inform and improve programmes.

The Framework is available at: <http://www.refworld.org/docid/4fe875682.html>.

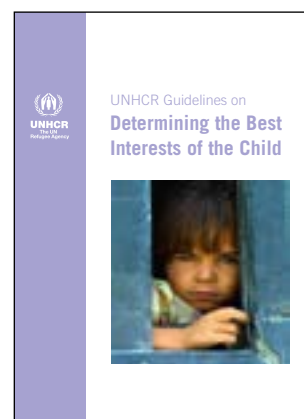


“UNHCR GUIDELINES ON DETERMINING THE BEST INTERESTS OF THE CHILD” (2008)

In order to assist UNHCR and partner agencies operationalize the best interests principle in their everyday work, UNHCR developed these guidelines to enable its operations to interpret the best interests principle for refugee children.

The Guidelines review the best interests principle as enshrined in the Convention on the Rights of the Child and other relevant legal sources and provide guidance on how to apply the principle in the case management process. UNHCR’s best interests determination procedure is outlined with reference to the different situations in which it constitutes a vital safeguard, such as for decisions on durable solutions for unaccompanied and separated children, or on temporary care arrangements.

The Guidelines are available at:
<http://www.refworld.org/docid/48480c342.html>.



“FIELD HANDBOOK FOR THE IMPLEMENTATION OF UNHCR BID GUIDELINES” (2011)

Experience and feedback from field staff since the “UNHCR guidelines on determining the best interests of the child” was published have indicated that further implementation guidance is needed. The Guidelines describe what needs to be done, but more could be said on how to practically do it. In response, UNHCR and the International Rescue Committee worked together to develop a field handbook for best interests determination. The 2008 Guidelines remain the authoritative guide, but the field handbook is a complementary source of guidance that offers additional advice on how to carry out best interest determination process in practice.

The field handbook is available at:
<http://www.refworld.org/docid/4e4a57d02.html>.



TOOLS TO ENHANCE CHILD PROTECTION IN EMERGENCY SETTINGS

“Emergency handbook: A UNHCR guide to agile, effective and community based humanitarian emergency responses” (4th edition, 2015)

This updated handbook provides a practical tool for UNHCR emergency operations, partners in emergency operations and other interested parties. The chapter on child protection contains guidance on protection risks that children face in emergencies and key steps to take to mitigate and/or respond to these risks. It also provides a useful selection of key documents, standards and tools for the implementation of child protection in emergencies, including a protection checklist setting out mandatory priority interventions.

The handbook is published in a digital version. The chapter on child protection is available at: <https://emergency.unhcr.org/entry/61580/child-protection>.

“Alternative care in emergencies toolkit” (2013)

The UN Interagency Working Group on Unaccompanied and Separated Children (IAWG) developed the “Alternative care in emergencies toolkit” to facilitate inter-agency planning and implementation of alternative care and related services for children separated from or unable to live with their families during and after an emergency. Alternative care is provided while longer term solutions such as family tracing and reunification are carried out.

The toolkit provides practical inter-agency guidance based on previous learning that can be quickly adapted in an emergency including:

- **Guiding principles** that are central to all interim care-related work;
- **Summary guidance** for quick reference to the tools and information throughout the document;
- **Extended guidance**, including:
 - ➔ Managing and coordinating a programme, including how to support families and caregivers without encouraging secondary separation,
 - ➔ Managing individual care to respond to the protection needs of each individual child, and
 - ➔ Information on how to set up, assess and support a variety of types of alternative care; and
- **60 adaptable tools**, including best practices, country examples and learning from previous emergencies.

The toolkit is available at <http://goo.gl/QRzaEU>.





At a temporary shelter in Medan, Indonesia, a 24-year-old man holds a photograph of his mother. He had been trying to connect with her ever since embarking on a smugglers' boat several months before. © UNHCR / T.Harva / July 2015

6.2

Family tracing

Family members can become separated during travel for a number of reasons. While family tracing is relevant for all family members, regardless of age, it is of utmost importance for unaccompanied children, including children seeking asylum. Family tracing can lead to family reunification; however, safeguards are needed to ensure that children are not returned to a family or custodial situation where they would face abuse or neglect.

MAY 2015–PRESENT

Indonesia: Family reunification for unaccompanied and separated children



A Background and rationale

Among the 1,000 Rohingya refugees who arrived in Indonesia from Myanmar in May 2015, over half were children, most of whom were unaccompanied or separated from their families. A number of those who initially travelled with families disembarked in different parts of Indonesia after being rescued, and did not at that

INTER-AGENCY: REGISTRATION FORMS FOR UNACCOMPANIED AND SEPARATED CHILDREN

The Interagency Working Group on Unaccompanied and Separated Children has developed inter-agency registration forms, along with a guidance note, to support documentation of information on unaccompanied and separated children for case management support or family tracing, in line with the child's best interests. The guidance note contains practical suggestions to assist non-specialized staff to make use of the registration form and conduct child-friendly screening interviews. The extended registration form follows a similar content as the simple registration form but collects more complete information to support the full case management process.

The inter-agency registration form package contains:

- A guidance note,
- A simple registration form, and
- An extended registration form.

The Interagency Registration Form Package for unaccompanied and separated children, issued in June 2014, is available at: <http://cpwg.net/resources/inter-agency-reg-form-package-english/>.

ICRC/IFRC: RESTORING FAMILY LINKS PROGRAMME

For more than one hundred years, the ICRC has been working in close collaboration with the International Federation of Red Cross and Red Crescent Societies (IFRC) to help individuals make contact with family members, that is, to restore family links. In order to fulfil this objective, relevant agencies collect information about missing persons, exchange family updates and develop tools to allow individuals to determine the whereabouts of family members (e.g. through the transmission of documents, telephone services, and purpose-built websites). The ICRC also supports mechanisms to clarify the fate of persons who remain unaccounted, registers and tracks individuals, and issues travel documents and attestations to facilitate the reunification of family members.

A dedicated website provides relevant information on services and contact details for the ICRC and IFRC through a search feature by country, and is available at: <https://familylinks.icrc.org/en/Pages/home.aspx>.



UNHCR: Information management systems for family tracing

The information on unaccompanied or separated children contained within the UNHCR proGres database can be used to support family tracing. UNHCR registration is often the first moment when information on refugees and asylum-seekers is consolidated. Certain data from proGres can be shared onwards with relevant actors for case management and tracing in line with UNHCR policy on the protection of personal data of persons of concern to UNHCR.¹

In refugee settings, partners have used different information management systems such as the inter-agency child protection information management system, to support case management identification, documentation, tracing and reunification of family members. It is important that information-sharing protocols are established to govern appropriate information and data sharing. Information sharing in line with protocols allows all relevant parties to have access to up-to-date information in line with data protection principles.

Early identification of unaccompanied or separated children or other children at risk during registration using the proGres database (or a government registration database in use) can support referral of children with specific needs to child protection actors, in line with each operations' child protection standard operating procedures. It is recommended that information in proGres be updated throughout the case management process.

¹ UN High Commissioner for Refugees (UNHCR), "Policy on the protection of personal data of persons of concern to UNHCR", May 2015, available at: <http://goo.gl/Mef11V>.

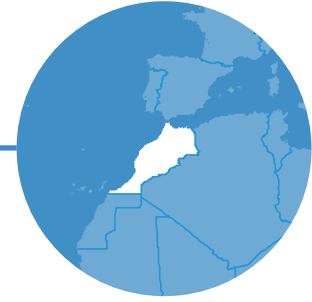


A 43-year-old transgender woman talks with a UNHCR field associate in Mexico, following her flight from Guatemala where she was persecuted by gangs. © UNHCR / S. Rich / February 2016

6.3

Procedures for identifying persons at risk of sexual and gender-based violence and other forms of exploitation and abuse

Experiences of abuse and exploitation often contribute to the decisions made by women, men, girls, or boys to flee their homes. Unaccompanied children may flee in order to avoid violence and abuse such as labour exploitation, forced or child marriage, or female genital mutilation/cutting. Women and girls may flee abusive relationships. LGBTI persons may be leaving behind aggressive official, community or family attitudes. Violence may also occur when individuals are on the move due to unsafe transient shelter options, irregular border crossings, detention, limited access to accurate information and advice, and lack of basic services and resources. Engaging the services of smugglers, or other criminal actors, in order to gain passage may lead to exploitation, abuse, or violence. All these factors leave women, girls, boys, and men exposed to and at-risk of sexual and gender-based violence (SGBV). Even those who have not experienced violence live with the psychological uncertainty and fear that violence may occur in the future. The lack of stability among mobile populations limits the possibility of building community-based protective mechanisms, or the ability to deliver the necessary medium- to long-term support services.



Morocco: Protection and assistance for women and girls at risk of trafficking, forced labour, sexual and gender-based violence and other forms of exploitation

A Background and rationale

In a context of mixed migration, Morocco serves as both a destination and transit country. Unaccompanied or separated children, vulnerable women and girls, LGBTI persons and persons living with disabilities are at heightened risk of violence, exploitation or abuse, including human trafficking, smuggling and extortion.

In response to these challenges, UNHCR is working closely with partner organizations to establish differentiated processes and procedures for persons at risk. The Protection Working Group in Oujda, a regional protection platform coordinated by UNHCR's partner organization the Moroccan Human Rights Organization, is a platform bringing together organizations working regionally on the protection of migrants, refugees and asylum-seekers. The Protection Working Group has established sub-groups on thematic issues including sexual and gender-based violence (SGBV), human trafficking and health. It provides a functional coordination structure, as well as a platform for information exchange. As such, it plays a vital role in monitoring and reporting on relevant trends concerning movements in the context of mixed migration.

B Actors

- UNHCR
- United Nations agencies: IOM, UNFPA, UNAIDS, UN Women
- NGOs, including Fondation Orient-Occident, Association Action Urgence, Association pour la Lutte Contre le SIDA, Organisation Marocaine des Droits Humaines, Maitre Lemseguem, Association Marocaine d'Appui à la Promotion de la Petite Entreprise
- Government agencies, including the Ministry of Moroccans Residing Abroad and Migration Affairs; Ministry of Solidarity, Ministry of Women, Family and Social Development; Ministry of Justice and Liberties; Ministry of Employment and Social Affairs; Ministry of Health; Ministry of National Education and Vocational Training

C Actions

Actions and services include the following:

- ➔ Identification of SGBV survivors through registration, refugee status determination and protection interviews, community-based protection and assistance activities, and as well as through the "Heightened risk identification tool";

-
- Case identification and referrals with the assistance of community volunteers

 - Ongoing needs assessments through outreach missions, community meetings, home visits, information sessions and awareness-raising activities;

 - Provision of targeted cash assistance to SGBV survivors and persons at risk of SGBV;

 - Urban housing to accommodate SGBV survivors and persons at risk;

 - Medical assistance and specialized support including mental health care;

 - Specialized psychosocial support and preferential consideration for language and life skill training programmes;

 - Livelihood opportunities as income generating activities and vocational trainings;

 - Legal aid for persons of concern who wish to pursue perpetrators through justice system;

 - Identification and referral of persons practicing survival sex for enrollment in income generating or alternative activities;

 - Ongoing capacity building to enhance skills and knowledge; and

 - Collaboration with other UN agencies to strengthen coordination mechanisms.

D Review

Through the efforts of the Protection Working Group and the many actors involved, response activities are well established for survivors of SGBV and other forms of abuse and exploitation, as these are integrated into national services and supported by civil society organizations that assist with the timely identification and referral of survivors. UNHCR's partner organizations run protection monitoring services at Morocco's main entry point in Oujda to identify and refer asylum-seekers to register with UNHCR. A functional referral system through UNHCR's partners in Rabat, Casablanca, Oujda, Nador and Tangier is in place to ensure that each survivor of violence receives the appropriate support including medical care, psychosocial support, legal aid and livelihood opportunities.

However, SGBV prevention remains a challenge, particularly in light of the fact that persons at risk live in 41 localities all over the country. This makes it difficult to implement community-based protection mechanisms and programmes.

Advocacy efforts need to be further strengthened to advance a national dialogue and to develop an action plan to address challenges in SGBV prevention and response.

E Further information

UNICEF, National Human Rights Council of Morocco, Amane, "Etude sur la violence sexuelle à l'encontre des enfants au Maroc", 2014, available at: https://www.unicef.org/morocco/french/Etude_sur_la_VS_2014.pdf.



6.4

Procedures to protect victims of trafficking

In accordance with international law, and national legislation where relevant, States are primarily responsible for protecting and assisting victims of trafficking falling under their jurisdiction and for safeguarding their human rights, regardless of their status.

Some States have coordinated systems or mechanisms in place for identifying and responding to the needs of all victims of trafficking within their territories. These are sometimes called national referral mechanisms. They often comprise a multi-stakeholder co-operative framework through which identification, referrals and responses to victims of trafficking are coordinated and harmonized between State actors (such as law enforcement personnel, immigration and asylum officers), social welfare organizations and NGOs.

In the absence of national mechanisms for the identification and protection of victims of trafficking, or in cases where they do not meet the requirements of international and of national law, civil society may contribute to fill the gap. NGOs working with victims of trafficking can bring a wealth of experience to the design and implementation of State protection systems, by working in partnership with them. In addition, UN agencies such as UNHCR, UNODC, UNICEF, ILO and IOM have assistance and protection programs in place for victims of trafficking. Several such UN agencies have published guidance on the specialized legal, security, health, psycho-social and financial needs of victims of trafficking – as well as what solutions may be available to them.²

2004

OSCE: Practical handbook on national referral mechanisms

The Organization for Security and Co-operation in Europe (OSCE) has published “National referral mechanisms: Joining efforts to protect the rights of trafficked persons”, a handbook with useful information on how to develop and implement national referral mechanisms.

It defines key elements and outlines principles and best practices for the implementation of a national referral mechanism in an effort to further a coherent and coordinated approach to assisting victims of trafficking.

The handbook is currently being revised and updated. The 2004 version is available at: <http://www.osce.org/odihr/13967?download=true>.



² See OHCHR, “Recommended Principles and Guidelines on the Human Rights of Victims of Trafficking”, 2002, available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>; UNICEF, “Guidelines on the Protection of Child Victims of Trafficking”, 2006, available at: https://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf; and UNHCR, “Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked”, 2006, available at: <http://www.refworld.org/docid/443679fa4.html>.

2007



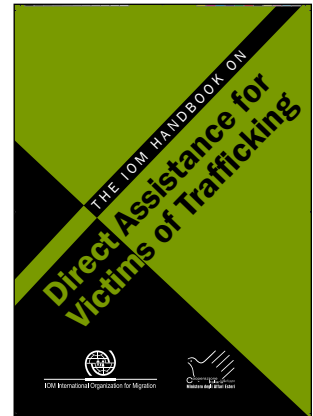
IOM: Practical handbook on direct assistance for victims of trafficking

“The IOM Handbook on Direct Assistance for Victims of Trafficking” is a useful tool with recommendations for the development of effective victim assistance programmes. The handbook summarizes and systematizes lessons learned through IOM’s experience assisting victims of trafficking. It offers guidance and practical suggestions related to areas such as the screening and referral of victims of trafficking, shelter, health and reintegration assistance. Rather than providing a single methodology for assisting victims of trafficking, the handbook offers suggestions for approaches that can be adapted to the individual contexts in which victim assistance programmes take place.

In addition, the annex of the handbook includes an interview checklist along with basic instructions on ethical principles and appropriate behaviour in caring for and interviewing victims of trafficking.

The handbook is available at:

http://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf.



OCTOBER 2014–PRESENT



Thailand: Screening for victims of trafficking

A Background and rationale

The irregular maritime movements of mixed populations that have been prevalent in the Asia-Pacific region for many years increased at a particularly rapid rate in late 2014. Thousands of refugees and migrants now transit Thailand under conditions that in some instances amount to human trafficking. Thailand’s Anti-Human Trafficking Act provides a frame of reference, requiring authorities to conduct screenings for the purpose of identifying and protecting victims of trafficking.

B Actors

- The Thai Ministry of Social Development and Human Security
- The Royal Thai Police

C Actions

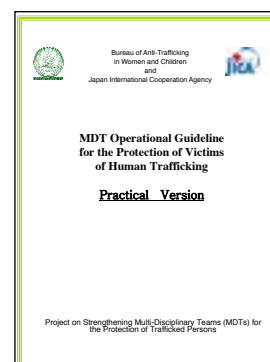
- ➔ The Thai Government established multidisciplinary teams consisting of provincial social workers and law enforcement officers to identify and rescue victims of trafficking among maritime arrivals in the south of Thailand.
- ➔ The Government also developed operational guidelines for these multidisciplinary teams with checklists for procedures and rights and entitlements of victims of trafficking, sample forms and interview questions.

→ Multidisciplinary teams identify and assess cases to determine if individuals are victims of trafficking.

→ The teams then provide protection and assistance to those found to be victims of trafficking, in accordance with Thai law.

D Review

The Government has taken progressive steps, employing multidisciplinary teams consisting of provincial social workers from the Ministry of Social Development and Human Security, and law enforcement officers, to identify and rescue victims of trafficking. Some challenges remain such as the lack of translators and legal representatives for potential victims of trafficking and delays in issuing temporary permits for identified victims of trafficking. The Ministry of Social Development and Human Security is increasingly processing temporary stay permits, and has issued undocumented person identification cards to some Rohingya refugees under article 37 of the Anti-Human Trafficking Act. The card does not allow the holder to work, and freedom of movement is limited to the province where the individual is accommodated. In addition, cardholders are not allowed to reside outside approved residential facilities.



E Further information

Operational guidelines, including screening form, are available at: <http://goo.gl/117LpB>.

2014–PRESENT

Sudan: Kassala safe shelter



A Background and rationale

East Sudan is host to thousands of migrants, asylum-seekers and refugees. Approximately 80 per cent of newly registered asylum-seekers in east Sudan refugee camps move onward within a few months of arriving, often joining the dangerous and irregular migration route to Europe. UNHCR Sudan has regularly received reports of trafficking among refugees and asylum-seekers moving in this manner, and has initiated a counter-trafficking response managed from its office in Kassala in collaboration with IOM and the Government of Sudan.

Despite the non-penalization of asylum-seekers for illegal entry and presence under the Sudanese Asylum Act 2014, asylum-seekers who are victims of trafficking are frequently detained for infringing immigration procedures to ensure their appearance as witnesses in trafficking court cases. As a result of being placed in detention, these victims do not have access to registration or refugee status determination procedures.

In order to provide protection to identified victims of trafficking and other persons of concern at serious risk to their life and safety, UNHCR established a safe shelter for victims of trafficking in Kassala, where psychological and medical assistance as well as access to legal aid and solutions is provided.

B Actors

- UNHCR
- Sudanese Red Crescent Society
- Government of Sudan

C Actions

- The safe shelter accommodates refugees and asylum-seekers who are summoned as witnesses in court proceedings against trafficking perpetrators, victims who are facing life-threatening situations or serious harm, as well as those who require particular medical attention and care which cannot be adequately monitored or obtained within the camps. Separate living quarters are provided for men and women.

- Registration and refugee status determination procedures, when required, are conducted at the safe shelter.

- UNHCR has arranged for specialized psychiatric support to be provided on a case-by-case basis, as well as medical assistance and legal aid.

- Admission to the safe shelter is controlled through standard operating procedures, with regular monitoring and assessment of each individual's stay. Stays are temporary, and during the time at the safe shelter, sustainable solutions are sought including relocation to Khartoum, urgent resettlement or return to the nearby Wad Sharifey and Shagarab camps.

- Tailored training programmes are provided for Sudanese Red Crescent personnel working in the safe shelter to ensure a positive environment for victims, especially those who are suffering from psychological trauma.

- Safe shelter staff are trained on supporting the rehabilitation of victims and identifying appropriate solutions.

D Review

The Kassala safe shelter has been a successful method of providing protection to victims of trafficking and an alternative to their detention. By the end of 2015, the safe shelter housed 49 individuals, out of which 28 were victims of trafficking and 24 were witnesses in cases being tried under the 2014 Human Trafficking Act. By March 2016, three new admissions were brought to the safe shelter. During their stay, the residents were provided with medical and psychosocial support. In addition, residents were registered remotely with the Government of Sudan, and their asylum claims were assessed and finalized. Eight individuals were successfully resettled, and as of September 2016, 16 individuals were in the final stages of resettlement interviews.

Despite its success, there are challenges. Enforcing exit procedures is troublesome, as residents become accustomed to living at the safe shelter and refuse timely reintegration into the camp after the reasons for staying at the safe shelter are resolved. Moving forward, UNHCR is considering applying strict exit procedures and relocating the safe shelter closer to refugee camp.



A UNHCR refugee status determination officer interviews a Sudanese man at the Sallum border crossing between Libya and Egypt. © UNHCR / L. Dobbs / February 2012

6.5 Asylum procedures

Asylum procedures are not ends in themselves but rather are means to ensure access to protection and rights. With record levels of displacement leading, in recent years, to rising numbers of applications for international protection (in both UNHCR mandate operations and State asylum systems), it is more important than ever to take strategic approaches to questions of which processes and solutions should be pursued under which circumstances and, where appropriate, how processes can be streamlined so as to ensure necessary and efficient access to the safeguards of refugee status (including protection from *refoulement* and access to rights).

In 2015, UNHCR developed a new strategic direction reflecting on the role of RSD, both for States and for UNHCR, within the broader context of protection interventions.³ The strategic direction reflects a move away from a traditional and linear approach to case management of individual claims to a more strategic and differentiated approach in which the process or solution pursued depends on an analysis of the protection needs of the individual or population concerned. While RSD is often a critical step in ensuring protection, there are situations in which refugees may be able to find protection through other means.

³ UNHCR, “Refugee status determination”, 31 May 2016, EC/67/SC/CRP.12, available at: <http://www.refworld.org/docid/57c83a724.html>.

UNHCR's new approach has an important role to play in mixed migration situations. The move from regular or traditional RSD as the default protection response towards more targeted and differentiated responses can contribute to decongesting asylum systems in mixed migration situations.

With such an approach, UNHCR advocates for the use of data and information gained from or about a population of concern (see Chapters 1–5) to make an objective evaluation of individual or group protection needs and, importantly, the likely protection impact to be derived from any subsequent referral to a specific solution or process.

Available solutions or processes will vary in each context but can be grouped into the following categories:

- Regular RSD;
- Diversified case processing strategies;
- Complementary processes or solutions (see Chapter 7); and
- An otherwise suitable outcome or return (see Chapter 9).

RSD is not always a necessary precursor for direct referral to an appropriate complementary process or solution or otherwise suitable outcome. There will be circumstances in which, after an in-depth analysis of the overall protection environment, RSD remains the most effective protection intervention for some populations. For example, only recognized refugees may have access to the right to work which makes RSD a key protection intervention, or it may be necessary to address security concerns by providing a means to exclude persons responsible for serious criminal acts, including acts of terrorism.⁴

This section explains regular RSD and other RSD case processing strategies for individuals or groups. Examples are given of some of the ways that both States and UNHCR are adapting their methodologies to cope with the challenging context of large-scale displacement.

6.5.1 Regular refugee status determination (RSD)

Regular individualized RSD (or “full RSD”) refers to the type of RSD that will be required for individuals whose eligibility for refugee status cannot be accurately determined in any of the diversified case processing strategies described below. Regular RSD can be the chosen case processing method from the outset or it may be entered into after another procedure (for example, a simplified RSD procedure, or a non-RSD process such as a best interests assessment for a child) has highlighted that the issues raised by the case cannot be accurately determined under the process initially applied.

Regular RSD remains the most effective protection intervention for individuals for whom there is a protection dividend in determining their eligibility for refugee status in a timely manner, and whose eligibility for refugee status cannot be (or risks not being) accurately determined in more simplified procedures. For example, for individuals with claims that raise complex eligibility requirements, credibility or exclusion concerns, or for specific categories of persons in need (such as those in detention) or for whom RSD is required as a precursor to resettlement, regular RSD is crucial.

⁴ UNHCR, “Addressing security concerns without undermining refugee protection – UNHCR’s perspective”, 17 December 2015, Rev.2, available at: <http://www.refworld.org/docid/5672aed34.html>.

6.5.2 Diversified case processing strategies

Diversified case processing strategies include approaches to RSD in which cases are handled more speedily and efficiently than in regular RSD procedures. This is particularly important in mixed migration situations or when asylum systems are overwhelmed.

Diversified case processing strategies are appropriate when the profile or caseload lends itself to speedier or more efficient processing, for example, when the recognition rate is very high or very low, or when the majority of applicants have a similar background. For example, individuals might be grouped together based on shared characteristics (such as their ethnicity, place of former habitual residence, religion, gender, political background or age, or a combination thereof) and then processed through a pre-defined case processing strategy. Diversified case processing strategies can be used where there is a need for RSD as a precursor to a particular solution and may be particularly useful when there is a need to respond to a large influx or an increase in numbers of persons seeking international protection.

For any diversified case processing strategy employed, however, procedural safeguards must remain in place. These include the right to be heard, in a personal interview or otherwise; the right to information regarding the asylum process; access to interpretation enabling information to be received and participation in procedures in an understood language; the right to legal aid and legal representation; and the right to an effective remedy.

Care should be taken when developing criteria and systems for referral into any diversified case processing strategy to ensure they have appropriate oversight.

6.5.2.1 MERGED REGISTRATION AND RSD

Merged registration and RSD is a type of processing in which additional questions are added during the registration process with a view to capturing additional information from the individual being registered. For example, additional information may be gathered on place of origin or nationality, reasons for flight, exclusion considerations, and vulnerabilities or specific needs. The registration and RSD steps of the process are effectively merged as the more detailed registration interview then serves as a basis for recognizing persons as refugees. It can, however, also facilitate referral to other case processing streams and facilitate other forms of protection interventions.

Merged registration and RSD procedures should only be used where there is a high presumption of inclusion for a particular nationality, caseload or profile that affords the use of such a procedure. However, such procedures should only be used for caseloads where exclusion triggers are not present or can be readily identified allowing, where necessary, for referral to regular RSD. With this in mind, referral systems should be put in place for cases identified during merged registration and RSD procedures which require more in-depth analysis and that should therefore be referred to regular RSD.

6.5.2.2 SIMPLIFIED RSD PROCEDURES

Simplified RSD procedures occur after the registration interview has already taken place and describe procedures in which one or more elements of the regular RSD procedure are simplified, allowing for increased efficiency in processing, but which still involve a substantive examination of the applicant's claim. The type of simplification will depend on the caseload but can include, for example,

- Interviews that focus on key core issues of the claim (for caseloads with a high presumption of inclusion, with very low or high recognition rates);
- Recording interviews in lieu of verbatim transcripts (in limited circumstances); and
- Decision assessment templates with pre-populated legal analysis or pre-populated country of origin information.

The adoption of simplified RSD procedures is premised on a high degree of familiarity with a particular caseload or profile. In order to assist decision makers, and prior to implementing simplified RSD procedures, it is important to develop appropriate caseload- and profile-specific templates for examining and assessing claims, that are formally approved at the managerial level and that are kept up to date.

There is a risk that a reduction in the level of detail of examination of claims may impact negatively on the quality of decision making, leading in some cases to an increase in appeals. Simplified RSD also requires adequate safeguards to be put in place to identify exclusion concerns. Applicants whose claims raise credibility concerns and/or exclusion triggers should be referred to regular RSD.

6.5.2.3 ACCELERATED RSD PROCEDURES

Accelerated RSD procedures involve substantive assessment of the refugee claim but with an acceleration applied to all or some timelines in the RSD process. This may mean that the applicant is interviewed immediately after registration or before other pending cases that may have been filed at an earlier date. Otherwise, the time period between interview and issuance of decision may be shortened. The acceleration could also occur at the appeal stage through a shortening of timelines for submitting or reviewing an appeal.

Accelerated RSD procedures may or may not also be simplified (see 6.5.2.2). Accelerated RSD procedures (especially in conjunction with simplified RSD procedures) can lead to faster recognition of refugee status and access to associated rights/protection benefits being conferred more quickly, or may lead to faster negative decisions. Where used appropriately, accelerated RSD procedures can contribute to the perceived credibility and integrity of procedures and assist in the management of applicants' expectations.

Accelerated RSD procedures can be used for applicants with heightened physical/legal protection needs (e.g. those who may be subject to a risk of immediate *refoulement*, arbitrary arrest or detention in the host country). They can also be used for applicants who hail from a particular country of origin that is known to have a high presumption of inclusion. Finally, they can also be used for asylum applications that are manifestly well-founded, unfounded or abusive.⁵

Accelerated procedures should not be accelerated in any way that infringes upon procedural safeguards, thereby making the process an unfair one.

⁵ UNHCR, "The problem of manifestly unfounded or abusive applications for refugee status or asylum", 20 October 1983, No. 30 (XXXIV) – 1983, available at: <http://www.refworld.org/docid/3ae68c6118.html>.



Canada: Expedited processing of refugee claims

A Background and rationale

In December 2012, refugee reform provisions that amended Canada’s Immigration and Refugee Protection Act came into force. These amendments significantly modified the refugee determination process at the Immigration and Refugee Board of Canada (IRB). Specifically, the amendments allowed for regulatory time limits to be implemented, which require refugee claims to be heard within 30, 45, or 60 days, with limited exceptions. Prior to the 2012 reforms, refugee claim hearings were not subject to time limits.

Additionally, the Personal Information Form has been replaced by a Basis of Claim Form, which is used to obtain information on biographical data, travel routes, education and employment history, family ties, marital and immigration status, criminality, refugee status elsewhere, removal, and the reasons for departure from the country of origin.

The Immigration and Refugee Protection Act provides that the Refugee Protection Division of the IRB may allow a claim for refugee protection without a hearing in certain situations.

The IRB Policy on the Expedited Processing of Refugee Claims establishes a process whereby claims made by claimants who are nationals of certain countries may be determined to be a Convention refugee or a person in need of protection without a hearing. This process is commonly known as the “expedited process”.

B Actors

- The Immigration and Refugee Board of Canada (IRB)

C Actions

-
- The IRB issued the Policy on the Expedited Processing of Refugee Claims in 2015. This policy is intended as a case management tool, which applies an expedited process to persons from designated countries and not to claim types. Claims made by claimants who are nationals of certain countries may be determined to be Convention refugees or persons in need of protection. The full criteria for eligibility are outlined in the policy.
-
- Criteria to designate a country in the expedited process include high acceptance rates and a high volume of claims from these countries. The procedure foresees that the case processing for claimants from designated countries is expedited.
-
- Once a claim has been identified as being eligible to be processed under this policy, the claimant is informed that the claim has been selected for accelerated processing and will be asked to provide supporting documentation, if desirable.
-
- A decision may be rendered without a hearing. However, IRB Board Members still make the final decision on who is a refugee. If the members determine that it is not appropriate to make a positive decision based on the evidence in the file, the claim will proceed to a hearing.

D Review

According to information provided by the IRB, the expedited process has established an effective method that enables refugee claims to be resolved fairly and efficiently. The IRB has designated two countries under its expedited processing: the Syrian Arab Republic and Iraq. In terms of success rate, in 2015 two-thirds of Syrian claims under the expedited policy were accepted without a hearing and finalized in 60 days. In addition, those claimants that were asked to attend a hearing had a 98 per cent acceptance rate.

E Further information

See the Policy on Expedited Processing available at:

<http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/pol/Pages/polRpdSprExpProAcc.aspx>.

6.5.2.4 PRIMA FACIE RECOGNITION APPROACH

A prima facie approach involves the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin (or, in the case of stateless asylum-seekers, their country of former habitual residence) that indicate that individuals fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition.⁶

Such an approach is particularly suited to situations of large-scale arrivals or in relation to groups of similarly situated individuals who share a readily apparent common risk of harm.

In the implementation of such an approach, a prima facie policy or declaration is applied to a group defined by certain criteria. It is then necessary to ensure, through a swift but fair individual procedure, that applicants fall into that group.

A prima facie recognition approach operates only to recognize refugee status while decisions to reject, e.g. for reasons of the applicant not falling within the group or for exclusion reasons, require an individual RSD assessment.

While a prima facie approach anticipates that all members of the group will be included in the approach, certain members of the group can still be processed through regular RSD or other diversified case processes depending on the operational context and group characteristics.

⁶ UNHCR, “Guidelines on International Protection No. 11: Prima facie recognition of refugee status”, 24 June 2015, HCR/GIP/15/11, available at: <http://www.refworld.org/docid/555c335a4.html>.



Syrians fleeing renewed fighting rush across broken down border fences at the Akçakale border crossing in southern Turkey. © AFP / B. Kilic / July 2015

6.6

Temporary protection or stay arrangements

Temporary protection or stay arrangements (TPSAs) respond to humanitarian crises and complex or mixed population movements, particularly in situations where existing responses are not suited or are inadequate. TPSAs are pragmatic tools of international protection, reflected in States' commitment and practice of offering sanctuary to those fleeing humanitarian crises. They are complementary to the international refugee protection regime and are used at times to fill gaps in that regime as well as in national response systems and capacity, especially in non-Convention States.

TPSAs have a long history as an emergency response to the large-scale movement of asylum-seekers, providing immediate protection from *refoulement* and basic minimum treatment. Over time other forms of TPSA have been implemented as an appropriate response, including to humanitarian crises and complex or mixed cross-border population movements.

UNHCR suggests that TPSAs would ideally be developed on a multilateral/regional basis, while requiring implementation at the individual State level.



Turkey: Temporary protection for Syrian refugees and stateless Palestinians originating from the Syrian Arab Republic

A Background and rationale

A temporary protection regulation was issued in October 2014 by the Council of Ministers of the Republic of Turkey, as per Article 91 of the Law on Foreigners and International Protection. It defines “temporary protection” as a protection status granted to foreigners who were forced to leave their country, cannot return to the country they left, arrived at or crossed Turkish borders in groups or individually during a period of mass influx to seek emergency and temporary protection and for whom international protection requests cannot be taken under individual assessment.

B Actors

- Turkish authorities, including the Directorate General of Migration Management operating under the Ministry of Interior
- Syrian nationals
- Refugees and stateless persons from the Syrian Arab Republic, including those without identification documents.

C Actions

The temporary protection regulation:

-
- Enshrined in law the right to legal stay on Turkish territory and protection from *refoulement* for temporary protection beneficiaries;
-
- Recognized as beneficiaries on a prima facie, group-basis, Syrian nationals, refugees and stateless persons from the Syrian Arab Republic, including those without identification documents;
-
- Registered beneficiaries in all provinces, as carried out by the Directorate General of Migration Management;
-
- Enumerated rights applicable to beneficiaries detailed in the legal framework, such as access to a set of basic rights and services, including free healthcare; and
-
- Prioritized persons with special needs for accommodation and special provision for unaccompanied children.

D Review

The Turkish temporary protection regulation created a framework for addressing the immediate and short-term protection and humanitarian needs of beneficiaries. As of September 2016, Turkey was hosting 2.7 million Syrian refugees under this regime. However, in the course of the temporary protection regime, processing of international protection applications are deferred.

E Further information

An English version of the temporary protection regulation from 22 October 2014 is available at: <http://www.refworld.org/docid/56572fd74.html>.

UNHCR, “Guidelines on temporary protection or stay arrangements”, February 2014, is available at: <http://www.refworld.org/docid/52fba2404.html>.

TEMPORARY PROTECTION REGULATION
PART ONE
Objective, Scope, Basis, and Definitions
Objective and scope ARTICLE 1 - (1) The objective of this Regulation is to determine the procedures and principles pertaining to temporary protection proceedings that may be provided to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment, to determine proceedings to be carried out related to their reception in Turkey, their stay in Turkey, their rights and obligations and their exit from Turkey, to regulate the measures to be taken against mass movements, and the provisions related to the cooperation between national and international organizations under Article 91 of the Law No. 6458 on Foreigners and International Protection of 4.4.2013.
Basis ARTICLE 2 - (1) This Regulation is prepared on the basis of Article 91 of the Law No. 6458 on Foreigners and International Protection of 4.4.2013.
Definitions ARTICLE 3 - (1) For the purposes of the implementation of this Regulation, the following terms shall be construed as follows: a) AFAD: Prime Ministry Disaster & Emergency Management Authority; b) Family members: The foreigner's spouse, children who have not attained maturity and dependent children who have attained maturity; c) Minister: Minister of Interior; d) Ministry: Ministry of Interior; e) Child: A person who has not completed the age of eighteen and has not yet attained maturity; f) Temporary accommodation center: Centers that are established for the purpose of providing collective accommodation and meals for foreigners under this Regulation; g) Temporary protection: Protection status granted to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment; h) Person benefiting from temporary protection: Foreigners who were granted temporary protection; i) Director General: Director General of Migration Management; j) Directorate General: Directorate General of Migration Management; k) Residence Address: The location as recorded under the address registration system in Turkey; l) Law: Law No. 6458 on Foreigners and International Protection of 4.4.2013; m) Mass influx: Situations where a high number of people come from the same country or a geographical region and procedures related to international protection status cannot be individually followed because of the high number of people;

Guidelines on Temporary Protection or Stay Arrangements
1. PURPOSE OF THESE GUIDELINES 1. The purpose of these Guidelines is to guide and assist Governments in the development of Temporary Protection or Stay Arrangements (TPSA) in response to humanitarian crises and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate. The TPSAs described in this document would ideally be developed on a multilateral/regional basis, while requiring implementation at the individual State level. The benefits of moving away from unilateral, ad hoc responses to those that are multilateral, as well as more predictable and transparent per se, are well acknowledged. This document sets out the elements of possible TPSAs, preferably as a standing arrangement that can be activated in response to particular situations or events when they arise. 2. These Guidelines build on international consultations undertaken, inter alia, at two Roundtables on Temporary Protection in 2012 and 2013, which aimed to identify the scope and minimum standards of temporary protection/stay, as well as an Expert Meeting on International Cooperation to Share Burdens and Responsibilities in 2013. ¹ The Guidelines also draw from lessons learned from existing regional protection instruments and arrangements. ² An Annex is attached, providing an “at a glance” summary. 3. BACKGROUND 3. Temporary protection/stay arrangements are pragmatic “tools” of international protection, reflected in States’ commitment and practice of offering sanctuary to those fleeing humanitarian crises. TPSAs are complementary to the international refugee protection regime, being used at times to fill gaps in that regime or as well as in national response systems and capacity, especially in non-Convention States. <small>¹ United Nations High Commissioner for Refugees (UNHCR), Roundtable on Temporary Protection, 10-20 July 2012, San Remo, Italy; Summary Conclusions, available at http://www.unhcr.org/refugees/52fba2404.html UNHCR, Roundtable on Temporary Protection, 15-16 July 2013, Geneva, Switzerland, available at: http://www.unhcr.org/refugees/52fba2404.html ² UNHCR, Expert Meeting on International Cooperation to Share Burdens and Responsibilities, 28 June 2013, Amman, Jordan; Summary Conclusions, available at http://www.unhcr.org/refugees/52fba2404.html ³ See, in particular, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, available at http://www.unhcr.org/refugees/52fba2404.html and the 1984 Cartagena Declaration on Refugees, Co-developed by the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at http://www.unhcr.org/refugees/52fba2404.html Council of the European Union, Council Directive 2002/92/EC of 20 July 2002 on Minimum Standards for Granting Temporary Protection in the Event of Mass Influxes of Displaced Persons and Issuance of Residence Permits to Displaced Persons, 2002/92/EC Council Directive 2002/92/EC of 20 July 2002 on Minimum Standards for Granting Temporary Protection in the Event of Mass Influxes of Displaced Persons and Issuance of Residence Permits to Displaced Persons, 2002/92/EC Temporary Protection Directive), available at: http://www.unhcr.org/refugees/52fba2404.html</small>

