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

UNHCR Comments on the Draft Law of the Republic of Armenia on Legal Assistance in Criminal Cases

Introduction

The United Nations High Commissioner for Refugees (UNHCR) Representation in the Republic of Armenia is pleased to hereby provide its comments and observations on the Draft Law of the Republic of Armenia on Legal Assistance in Criminal Cases (hereafter "the Draft Law"), as shared with UNHCR by the Ministry of Justice of the Republic of Armenia on 5 August 2020. UNHCR's comments and recommendations are mainly focused on issues arising at the intersection of extradition procedures and international refugee protection, with a view to strengthening legal safeguards that should apply where refugees or asylum-seekers are subject to an extradition request.

UNHCR offers these comments as the Agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees. As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, *"[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."*[1] UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees (hereafter "the 1951 Refugee Convention") according to which State parties undertake to *"co-operate with the Office of the United Nations High Commissioner for Refugees […] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention"*.[2] A similar provision is included in Article II of the 1967 Protocol relating to the Status of Refugees.[3]

Thus, UNHCR's comments and availability for further consultations in the context of this legislative process are based on these international instruments. Moreover, the provisions of Article 81(1) of the Constitution of the Republic of Armenia (hereafter "the Constitution") require consideration for the practice of bodies operating on the basis of international human rights treaties, ratified by the Republic of Armenia, when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution. As described above, UNHCR has a very similar legal status as considered by Article 81(1) of the Constitution and as such is seeking to be treated analogously.[4]

General remarks

UNHCR appreciates that during the current challenging times, the relevant state agencies, the Government, and the National Assembly of the Republic of Armenia are pursuing efforts to enhance the national legislation with a view to bringing it in accordance with international human rights standards.

---

[1] See para 8(a) of the Statute of the Office of the High Commissioner for Refugees, as revised by General Assembly res. 58/153, 24 February 2004; available at: https://bit.ly/2p47kBm.
[2] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3be01b964.html.
[3] UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: https://www.refworld.org/docid/3ae6b3ae4.html.
[4] Constitution of the Republic of Armenia - Article 81. Basic Rights and Freedoms and International Legal Practice: *"1. The practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution.";* available at: https://www.president.am/en/constitution-2015/.

As a general principle, the 1951 Refugee Convention and its 1967 Protocol do not shield asylum-seekers or refugees who have engaged in criminal conduct from prosecution for their acts, nor does international refugee law preclude their extradition in all circumstances. However, where the person whose extradition is sought is an asylum-seeker or a refugee, his or her special protection needs must be taken into consideration when determining whether an extradition can take place.[5]

In June 2018, UNHCR already shared with the relevant authorities and the National Assembly of the Republic of Armenia comments and recommendations on similar issues, in the context of amendments to the Law on Refugees and Asylum and to the Administrative Procedure Code.[6] In September 2019, UNHCR also advocated in an additional set of recommendations for the specific protection regime of asylum-seekers and refugees to be taken into consideration in the upcoming extradition-related discussions of the judicial reform process.[7] UNHCR is providing the below further observations and comments to complement those aspects, which remain valid and relevant to the present Draft Law.

UNHCR welcomes the numerous improvements that have been introduced in the Draft Law, which aim at strengthening the relevant protection safeguards, notably (i) in cases where extradition requests concern asylum-seekers and refugees (Articles 4, 22(4), 25(3) and 45(1)(1) of the Draft Law); (ii) the need to consider the best interests of the child when deciding upon his/her extradition (Article 22(5) of the Draft Law); (iii) the safeguards related to crimes punishable by the death penalty (Article 25(2)(4) of the Draft Law), risk of torture or other ill-treatment (Article 25(3)(2) of the Draft Law) as well as to judgments *in absentia* (Article 30(2) of the Draft Law); (iv) the right of persons subject to extradition requests to be assisted by a free of charge interpreter/translator during the extradition procedures, to receive all relevant documents in a language they understand (Articles 32(2) and (3) of the Draft Law) as well as to receive free legal assistance (Article 32(1)(1) of the Draft Law); and (v) the safeguards surrounding extradition detention, as well as the possibility to resort to alternatives to detention (Articles 33(8), 35(7) and 35(9) of the Draft Law).

The objective of the following recommendations, covering substantive and procedural aspects of extradition, is to assist the Armenian authorities in adopting legislation which will ensure that extradition cases concerning refugees and asylum-seekers are handled in a manner that complies with international refugee and human rights law and standards.

Specific observations

1. Principles underlying legal assistance in criminal matters (Articles 1 and 4 of the Draft Law)

Principle of non-refoulement

Article 4 of the Draft Law explicitly mentions "*non-extradition of refugees to their country of origin*" as one of the principles underlying legal assistance in criminal cases. UNHCR welcomes this reference to the fundamental principle of non-refoulement, which is enshrined in Article 33(1) of the 1951 Refugee Convention and constitutes the cornerstone of the international refugee protection regime.[8]

[5] UN High Commissioner for Refugees (UNHCR), *Guidance Note on Extradition and International Refugee Protection*, April 2008, para 2, available at: https://www.refworld.org/docid/481ec7d92.html.
[6] UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the Amendments to the Legislation of the Republic of Armenia on Extradition and Asylum*, June 2018, available at: https://www.refworld.org/docid/5bd81c584.html.
[7] UN High Commissioner for Refugees (UNHCR), *UNHCR Recommendations concerning Asylum-related Cases in the Context of Judicial Reform in the Republic of Armenia*, September 2019, available at: https://www.refworld.org/docid/5e7cd1064.html.
[8] Article 33(1) of the 1951 Refugee Convention provides:

UNHCR notes, however, that as currently worded, the provision does not fully reflect the scope of the non-refoulement principle under international refugee law, and more generally international and regional human rights law. Specifically, UNHCR observes the following:

First, UNHCR would like to recall that the principle of non-refoulement as provided for in Article 33(1) of the 1951 Refugee Convention also applies to asylum-seekers, whose claims have not yet been decided,[9] whereas Article 4 of the Draft Law only refers to refugees.

Second, Article 4 of the Draft Law mentions the *"country of origin"* only, while the principle of non-refoulement applies not only with regard to the country of origin, but also with regard to any other country where there are risks of persecution in relation to the grounds set out in Article 1A(2) of the 1951 Refugee Convention, or from where there could be further return to a country where such risks also exist.[10]

Moreover, Article 33(2) of the 1951 Refugee Convention provides for certain, limited exceptions to the principle of non-refoulement with regard to refugees, which means that there are certain circumstances in which the extradition of a refugee to the country of origin would be consistent with international refugee law. Even in such cases, however, the requested State's non-refoulement obligations under international and regional human rights law may apply and provide for a mandatory bar to extradition.

Therefore, UNHCR proposes to reformulate Article 4 of the Draft Law through a more general reference to the principle of non-refoulement which would ensure full respect as to the scope and beneficiaries of this principle. This would also capture Armenia's legal obligations deriving from international and regional human rights law extending protection against return to a risk of torture or other forms of ill-treatment.

UNHCR recommends replacing the wording "*non-extradition of refugees to their country of origin*" in Article 4 of the Draft Law with "*the principle of non-refoulement*".

Confidentiality

UNHCR notes that with a view to safeguarding the protection of individual data, Article 1(4) of the Draft Law provides for the sharing of information containing individual data between the competent authorities of the Republic of Armenia and a foreign State only within the framework of international treaties ratified by the Republic of Armenia.

The principle of respect for private life, a fundamental principle of international human rights law, guarantees everyone the right to privacy and protects individuals from arbitrary or unlawful interference.[11] The relations which form the subject-matter of the Draft Law (assistance between States in criminal justice) imply extensive interaction and information exchange with foreign countries. Hence, it would be important to include a reference to data protection laws and principles among the underlying principles governing such interactions, to ensure that any sharing of information in interactions with foreign authorities in the context of assistance in the execution of criminal justice, including extradition procedures, is done in a manner consistent

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

[9] See, for example, UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the Principle of Non-Refoulement, November 1997*, section C, available at: https://www.refworld.org/docid/438c6d972.html.

[10] UN High Commissioner for Refugees (UNHCR), *Guidance Note on Extradition and International Refugee Protection*, April 2008, para 12, available at: https://www.refworld.org/docid/481ec7d92.html.

[11] Article 12 of the Universal Declaration of Human Rights of 10 December 1948; Article 17 of the International Covenant on Civil and Political Rights; Article 16 of the Convention on the Rights of the Child; Article 8 of the European Convention on Human Rights.

with international and regional human rights law as well as data protection principles and standards.[12]

The right to privacy and confidentiality requirements, as reflected in data protection principles and standards, are especially important for asylum-seekers and refugees, whose situation inherently involves a risk of persecution by the authorities of the country of origin. Their safety can be jeopardized if protection of information is not ensured. Potential threats to the safety of family members of an asylum-seeker or refugee who remain in the country of origin would also be an additional important consideration.[13]

UNHCR therefore recalls that, as a general rule, States should refrain from revealing any information about a person's refugee or asylum-seeker status to the authorities of the requesting State when such a State is the refugee's or asylum-seeker's country of origin. Disclosure of such information could entail protection risks for the concerned individual and family members that may remain in the country of origin and cannot be considered necessary nor proportionate in the context of an extradition procedure. Such disclosure would constitute a breach of the right to privacy as well as data protection principles and standards. A necessity and proportionality test should, however, also be undertaken in situations where the requesting State is not the country of origin.

Given the special protection needs of asylum-seekers and refugees, it would be an important safeguard against the violation of their right to privacy and protection of individual data to further spell out in the Draft Law that no information on the asylum claim or refugee status, including the very fact of an asylum application that had been submitted, shall be shared with the State requesting extradition. Considering that UNHCR has observed in practice a breach of the principle of confidentiality in case of an asylum-seeker by an agency other than the one directly responsible for the conduct of extradition procedures, it would also be advisable to establish the responsibility of extradition authorities to take appropriate measures to prevent the disclosure of data by other actors.

UNHCR recommends supplementing Article 1(4) of the Draft Law with a provision as follows:
"Information concerning the asylum claim or legal status, including the very fact that an asylum application has been made, shall not be shared with the requesting State in compliance with the key data protection principles of necessity and proportionality if that State is the country of origin of the asylum-seeker/refugee. In all other cases, the sharing of such information needs to stand the necessity and proportionality test in view of the fundamental human rights that are at stake. The competent authorities of the Republic of Armenia shall take the necessary measures to ensure respect for the right to privacy and confidentiality by all authorities of the Republic of Armenia in the course of legal assistance in criminal cases."

Furthermore, UNHCR is pleased to note that Article 32(4) of the Draft Law provides for the possibility to restrict visits to detained persons who are subject to an extradition request for reasons of their safety. In the course of its monitoring activities, UNHCR has regularly received reports by asylum-seekers claiming they were unable to refuse visits by representatives of diplomatic representations of their country of origin due to the fact that they were not informed of such visits in advance and not been given the possibility to refuse. With these concerns in

[12] UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, paras 4 and 7, available at: https://www.refworld.org/docid/453883f922.html. See also, for example, Council of Europe, *Explanatory Report to the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,* 10 October 2018, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808ac91a.
[13] Ibid 10, para 57-58, and 69; UN High Commissioner for Refugees (UNHCR), *UNHCR Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information*, 31 March 2005, available at: https://www.refworld.org/docid/42b9190e4.html.

mind, UNHCR would like to propose the inclusion of more explicit safeguards in Article 32(4) providing for an advance notice to and seeking of consent of asylum-seekers and refugees with regard to visits by representatives of their countries of origin.

UNHCR recommends supplementing Article 32(4) of the Draft Law with a provision as follows:
"Asylum-seekers and refugees who are temporarily detained or detained for the purpose of extradition shall be given advance notice of the visits of representatives of their countries of origin which shall be allowed only in case of express written consent by the asylum-seeker or refugee concerned."

2. Safeguards against extradition stemming from international refugee law and international and regional human rights law (Articles 22, 25, 29 and 45 of the Draft Law)

Article 25 of the Draft Law [Refusing extradition in case of existence of an international treaty ratified by the Republic of Armenia]

Considering the scope of the safeguards extended by the principle of non-refoulement to asylum-seekers and refugees against an extradition to their country of origin and to a third country,[14] it would be important to reflect these safeguards in the national legislation as clearly and expressly as possible. This is with a view to ensure that the competent authorities do not consent to the extradition of a refugee or asylum-seeker if it would be inconsistent with the State's non-refoulement obligations under international and regional refugee and human rights law.[15]

In case of refugees in particular, it would be important to include a specific mandatory refusal ground under Article 25 of the Draft Law, which would also ensure that refugees can benefit from other safeguards provided for by the Draft Law, such as the safeguards against detention, since the relevant provisions make a reference to Article 25.

In this context, UNHCR notes the inclusion under Article 25(3)(1) of the Draft Law of a provision as follows:

> *"3. Unless otherwise provided for by an international treaty ratified by the Republic of Armenia, a request of a foreign State for extradition of a person may be refused:*
> *(1) If there are valid reasons to believe that extradition was requested for the purpose of criminal prosecution or application of punishment for reasons of race, religion, nationality, membership of a particular social group or political opinion of the requested person;"*

UNHCR notes that this provision replicates the wording of Article 16(3) of the Criminal Code of Armenia.[16] It also bears some similarity to the first of two refusal grounds provided for in the so-called "discrimination clause" in Article 3(2) of the 1957 European Convention on Extradition, which the Republic of Armenia has ratified.[17]

While the introduction of a provision inspired by the non-refoulement provision in Article 33(1) of the 1951 Refugee Convention is welcome, UNHCR nevertheless notes that, in its current

[14] Ibid 10, paras 24-30.
[15] Ibid 10, para 39.
[16] UNHCR observations concerning this provision of the Criminal Code were also presented in UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the Drafts of Criminal and Criminal Procedure Codes of the Republic of Armenia*, 29 January 2020, section 1.1, available at: https://www.refworld.org/docid/5ee355c64.html.
[17] Article 3(2) of the European Convention on Extradition provides that extradition shall not be granted "if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons."

wording, Article 25(3)(1) of the Draft Law does not fully reflect the scope of the principle of non-refoulement in international refugee law for the following reasons:

a. The scope of the protection offered by Article 25(3)(1) of the Draft Law in its current wording is limited in that it extends only to instances where the extradition of the wanted person was requested for the purposes of prosecution or punishment for one or more of the reasons listed in the provision. The protection offered to a refugee within the meaning of the definition in Article 1(A)(2) of the 1951 Refugee Convention and Article 6 of the Law on Refugees and Asylum of the Republic of Armenia is much broader and applies to any circumstances in which there is a reasonable possibility that the individual concerned would face persecution for one of the reasons listed in the refugee definition. The principle of non-refoulement under Article 33(1) of the 1951 Refugee Convention would operate as a bar to the extradition of a refugee also in cases where he or she would be at risk of persecution for reasons unrelated to the criminal proceedings which gave rise to the extradition request.[18] UNHCR also notes, however, that the scope of the "discrimination clause" in Article 3(2) of the European Convention on Extradition, on which the new provision in the Draft Law appears to be at least partly modelled, is not limited to refugees. Thus, while there is considerable overlap between this provision and the refugee definition, there may well be situations in which it would not preclude the extradition of a refugee to a risk of persecution, and as such, it cannot be considered to give full effect to the principle of non-refoulement in the 1951 Refugee Convention and Article 6 of the Law on Refugees and Asylum of the Republic of Armenia.

b. The newly introduced refusal grounds in Article 25(3) of the Draft Law apply "[u]nless otherwise provided for by an international treaty ratified by the Republic of Armenia". While it is not explicitly stated, UNHCR understands from the context that this refers to international (bilateral or multilateral) treaties on extradition, or other international treaties which contain provisions that may serve as a basis for extradition between the States which have ratified them.

   In this context, UNHCR would like to reiterate that Armenia's obligations under international and regional refugee and human rights law, which form part of the legal framework governing extradition, including, in particular, mandatory bars to extradition where this would be in breach of the country's non-refoulement obligations under international law, prevail over any duty to extradite based on bilateral or multilateral extradition treaties.[19] Thus, the wording of the provision stipulating refugee status as a ground for refusal of an extradition request should offer protection consistent with the principle of non-refoulement in Article 33 of the 1951 Refugee Convention.[20] This applies equally to refusal of extradition based on the prohibition of exposing the wanted person to a risk of torture or other serious harm. UNHCR also notes that the non-refoulement obligations under international refugee law apply with regard to the risk of persecution in the refugee's country of origin as well as any other country where a risk of persecution related to one or more grounds listed in the 1951 Refugee Convention may exist. The same applies to bars to extradition based on the prohibition of a person's removal to a risk of torture or other serious harm under international and regional human rights law, which is applicable to all persons, including refugees and asylum-seekers, and is not subject to exceptions.[21]

[18] Depending on the circumstances, such cases may require a (re-)examination of the person's eligibility for refugee status by the designated asylum authorities, if there are indications that the person may have committed or participated in the commission of acts within the scope of an exclusion clause of the 1951 Refugee Convention which may render him or her undeserving of refugee status, or if one of the exceptions to the principle of non-refoulement in Article 33(2) of the 1951 Refugee Convention is determined to be applicable in proper procedures.
[19] Ibid 10, paras 21-23.
[20] As noted above, the only exceptions being the exceptions to the principle of non-refoulement provided for under Article 33(2) of the 1951 Refugee Convention.
[21] Ibid 10, paras 17, 24 and 26.

c. Article 25(3) of the Draft Law states that extradition "may be refused" in the circumstances provided for in paragraphs (1) and (2). This suggests that refusal of an extradition request in case of refugees (and others to whom the provisions may be applicable) is at the discretion of the extradition authority. UNHCR recalls that the principle of non-refoulement in international refugee law establishes a mandatory bar to extradition of a refugee who benefits from the protection of Article 33(1) of the 1951 Refugee Convention to any country where he or she may be at risk of persecution, or of onward removal to such a risk, leaving no scope for discretion to the authorities of the requested State. Similarly, the prohibition of refoulement to a risk of torture or other serious harm under international and regional human rights law constitutes a mandatory refusal ground, applicable to any person falling within its scope, including refugees and asylum-seekers.

Thus, UNHCR recommends including a mandatory refusal ground for refugees benefiting from the principle of non-refoulement under Article 25 of the Draft Law. Considering that taking a decision on the extradition of a refugee to a third country would imply a risk assessment (e.g. risks in the requesting State and risk of subsequent removal to the country of origin) by the extradition authorities, it may be appropriate that such assessment is conducted in consultation with the competent authority of the Republic of Armenia on asylum. UNHCR notes that taking such decisions through a consultative process is in the spirit of the Draft Law (e.g. Article 58(1)(3) on applicable criteria when taking a decision on the transfer of sentenced persons).

UNHCR recommends

- rephrasing Article 25(3) as follows: *"A request for extradition of a competent authority of a foreign State shall be refused: (…)*";
- *adding a mandatory refusal ground under Article 25(3) as follows: "if the foreign State requesting the extradition is the country of origin of a refugee benefiting from the protection of the principle of non-refoulement, or a third country where the refugee would face threats within the meaning of Article 6(1) of the Law on Refugees and Asylum or a risk of being subsequently removed to such a threat. When taking a decision on the extradition of a refugee to a country other than his/her country origin, the competent authority of the Republic of Armenia shall take into account the opinion of the competent authority of the Republic of Armenia on asylum."*

Article 45 of the Draft Law [Grounds for refusing extradition in the absence of an international treaty of the Republic of Armenia, based on reciprocity]

UNHCR notes that the same issue with discretion exists in the wording of Article 45(1)(1) and 45(1)(3) of the Draft Law regulating the grounds for refusal of an extradition request in the absence of an international treaty. Moreover, Article 45(1)(1) refers only to a person who has obtained the right to asylum or refugee status "in the Republic of Armenia". UNHCR recalls that the principle of non-refoulement also applies with respect to refugees recognized as such by other States, as well as to refugees recognized by UNHCR under its mandate.[22] The extraterritorial effect of refugee status is also recognized under Article 6(3) of the Law on Refugees and Asylum of the Republic of Armenia.[23] At the same time, if refugee protection safeguards are properly reflected under Article 25, there would be no need to repeat the relevant provision under Article 45, since it already contains a reference to Article 25, in which case UNHCR would recommend removing Article 45(1)(1) and 45(1)(3) from the Draft Law.

UNHCR recommends removing Article 45(1)(1) and 45(1)(3) from the Draft Law following the revision of Article 25(3) as suggested above.

[22] Ibid 10, paras 55-56.
[23] *Armenia: Law No. HO-211-N of 2008 on Refugees and Asylum* (2015) [Armenia], 27 November 2008, http://www.refworld.org/docid/4f1986412.html.

Article 22 of the Draft Law [Extradition of persons who committed a crime in a foreign State's territory and were discovered in the territory of the Republic of Armenia]

UNHCR notes that a safeguard against extradition stemming from the principle of non-refoulement is reflected under Article 22(4) of the Draft Law. UNHCR highly appreciates that following consultations with the Deputy Minister of Justice of the Republic of Armenia on 19 June 2020, Article 22(4) of the Draft Law was supplemented to extend the safeguard against extradition to asylum-seekers in compliance with the principle of non-refoulement, which applies to an asylum applicant for the entire duration of the asylum procedure.[24] UNHCR welcomes the inclusion in this provision of a safeguard requiring written assurances that a refugee or an asylum-seeker will not be further returned or extradited to the country of origin when the extradition request is made by a third country. This constitutes an important protection against possible violations of the principle of non-refoulement. UNHCR notes, however, that any written assurances provided in this context by the State requesting the person's extradition would need to be evaluated in light of all relevant circumstances (see also further on Article 29 of the Draft Law). Thus, the relevant safeguard against removal to a third country from where there is a risk of removal to the country of origin would need to be formulated in a manner implying such assessment.

Furthermore, as already noted, in accordance with the principle of non-refoulement under international refugee and human rights law, the requested State would also need to ascertain that extradition would not expose the refugee or asylum-seeker to a risk of persecution, torture or other irreparable harm in the requesting third country itself.[25]

The relevant safeguard under Article 22(4) would need to be modified accordingly. Provided that Article 25(3) is revised, as suggested above, to include a mandatory refusal ground for refugees, there would be no need to mention refugees under Article 22(4).

UNHCR recommends rephrasing Article 22(4) as follows:
"An asylum-seeker may not be extradited to his/her country of origin ***until the final determination of the asylum claim, including the judicial review procedures****. An asylum-seeker may be extradited to a third country except when there is a reasonable possibility that he/she would face threats within the meaning of Article 6(1) of the Law on Refugees and Asylum in that country or would subsequently be removed to such a threat. When taking a decision on the extradition of an asylum-seeker to a country other than the country of origin, the competent authority of the Republic of Armenia shall take into account the opinion of the competent authority of the Republic of Armenia on asylum."*

Article 29 of the Draft Law [Provision of guarantees for extraditing a person]

UNHCR welcomes the wording of Article 29(1) which gives authority to the State agencies reviewing an extradition request to assess whether the assurances received from the requesting State are "sufficient and acceptable".

However, the wording of Article 29(2) of the Draft Law and its introductory paragraph in particular seems to suggest that the assurances shall be considered *"sufficient and acceptable"* merely upon their submission by the requesting State, without the need to assess their suitability and reliability in terms of removing the relevant risks. This could create some confusion considering the wording used in Article 29(1), which implies that such an assessment should be conducted. The acceptance of diplomatic assurances as reliable without a proper assessment would not be appropriate and could lead to the violation of the principle of non-refoulement.

[24] UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the Principle of Non-Refoulement*, November 1997, section C, available at: https://www.refworld.org/docid/438c6d972.html.
[25] Ibid 10, para 26.

In UNHCR's view, diplomatic assurances should be given no weight when a refugee who enjoys the protection of Article 33(1) of the 1951 Refugee Convention is being returned, directly or indirectly, to the country of origin. The reason for this is that the country of asylum has already determined that the person had well-founded fears of being persecuted in the country of origin. Where the extradition of a refugee is requested by a country other than the country of origin, any diplomatic assurances would need to be assessed[26], including in light of the general human rights situation in the receiving State at the relevant time, and any practice with regard to diplomatic assurances or similar undertakings.[27] As regards an asylum-seeker, assurances would need to be considered as part of all available information in the context of the determination on the asylum claim, along the lines set out above.[28]

To avoid misinterpretation and ensure that the competent authorities of the Republic of Armenia conduct an effective assessment of assurances provided by a requesting State, **UNHCR recommends** adjusting paragraph 2 of Article 29 of the Draft Law as follows:
"*The competent authorities of the Republic of Armenia may request and assess the following guarantees: (…)*".

3. Procedural standards

3.1. Access to asylum procedures

Effective and efficient access to information on asylum is an important safeguard for guaranteeing the right to seek asylum and respecting non-refoulement obligations. The European Court of Human Rights has found that the lack of access to information is a major obstacle in accessing asylum procedures. It reiterated on numerous occasions the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints.[29]

UNHCR, thus, advises to include in the Draft Law explicit provisions requiring the relevant State authorities (Prosecutor General's Office, Ministry of Justice, authorities conducting the arrest of individuals and courts hearing appeals against decisions on extradition and motions/appeals concerning detention) to provide information on the asylum procedure to persons requested for extradition, and in case of an asylum application, refer it to the adjudicating authority without delay. This is particularly important in the context of persistent challenges in Armenia with

[26] Committee against Torture, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, adopted by the Committee at its fiftieth session (6-31 May 2013) UN Doc CAT/C/GBR/CO/5, para 18, available at: http://bit.ly/2FWrD8K; Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, *Interim Report to the General Assembly*, U.N. Doc. A/60/316, 30 August 2005, at para 51, available at: https://www.refworld.org/pdfid/43f30fb40.pdf.

[27] Decisions of the European Court of Human Rights, including *Othman (Abu Qatada) v. The United Kingdom*, Application no. 8139/09, Council of Europe: European Court of Human Rights, 17 January 2012, available at: https://www.refworld.org/cases,ECHR,4f169dc62.html; *Chahal v. The United Kingdom*, 70/1995/576/662, Council of Europe: European Court of Human Rights, 15 November 1996, available at: https://www.refworld.org/cases,ECHR,3ae6b69920.html; *Soering v. The United Kingdom*, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989, available at: https://www.refworld.org/cases,ECHR,3ae6b6fec.html; See also *Ahmed Hussein Mustafa Kamil Agiza v. Sweden*, CAT/C/34/D/233/2003, UN Committee Against Torture (CAT), 24 May 2005, available at: https://www.refworld.org/cases,CAT,42ce734a2.html; see also UN High Commissioner for Refugees (UNHCR), *UNHCR Note on Diplomatic Assurances and International Refugee Protection*, August 2006, available at: https://www.refworld.org/docid/44dc81164.html.

[28] Ibid 10, para 32.

[29] *Conka v. Belgium*, 51564/99, Council of Europe: European Court of Human Rights, 5 February 2002, para 44, available at: https://www.refworld.org/cases,ECHR,3e71fdfb4.html; *Ilias and Ahmed v. Hungary*, Application no. 47287/15, Council of Europe: European Court of Human Rights, 14 March 2017, paras 116 and 124, available at: https://www.refworld.org/cases,ECHR,58c968ad4.html; *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, paras 301 and 304, available at: https://www.refworld.org/cases,ECHR,4d39bc7f2.html; *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, para 204, available at: https://www.refworld.org/cases,ECHR,4f4507942.html.

respect to access to effective legal assistance due to the workload of public defenders and lack of interpretation services.[30]

UNHCR recommends supplementing Article 32 of the Draft Law with a provision as follows: "*The competent authorities referred to in Article 24 of this Law, authorities conducting the arrest of individuals and courts hearing appeals against decisions on extradition and motions/appeals concerning detention shall provide information on the asylum procedures to the persons requested for extradition who raise concerns with respect to serious human rights violations upon extradition and refer them to the competent authority on asylum issues without delay.*"

3.2. The right to judicial review and to translation/interpretation (Articles 26 and 32 of the Draft Law)

UNHCR welcomes the comprehensive judicial review safeguards and other procedural rights stipulated in the Draft Law and would like to make a few suggestions aimed at further clarifying the relevant provisions, with a view to strengthening the relevant standards and their practical effectiveness.

Article 26(4) makes the presence of the required person during the hearings at the Criminal Court of Appeal conditional upon an explicit request to that effect. Given the possible serious consequences of extradition and the importance of safeguarding the right to be heard as well as the persistent challenges with ensuring effective communication and consultations between public defenders and persons under extradition detention prior to court hearings in particular, it may be more appropriate to formulate the provision in a manner which implies the person's participation in the hearing in the Criminal Court of Appeal unless he or she expressly requests to conduct the proceedings in his or her absence.

UNHCR also notes that Article 26(2) of the Draft Law provides for a timeframe of 15 days for examination of appeals against decisions on extradition by the Criminal Court of Appeal and the Court of Cassation, without a possibility for extension. In the context of asylum procedures UNHCR often reminds that while efficient procedures are essential, timelines for judicial review should not undermine the fairness and quality of the procedure. While it is in the interest of all parties that quality decisions are taken as soon as possible, timeframes should be applied without prejudice to an adequate and complete examination of the case and be sufficiently flexible should complex issues of fact or law arise requiring extension of the timeframes.[31] UNHCR would like to raise similar considerations with regards to the timeframe envisaged in Article 26(2) of the Draft Law. While recognizing the importance of speedy remedies, the European Court of Human Rights also considered that this should not be given precedence over the effectiveness of procedural guarantees.[32] UNHCR makes this recommendation also in light of the fact that jurisdiction over extradition cases will be transferred to the first instance courts of general jurisdiction, which do not currently have such jurisdiction.

---

[30] See *Ilias and Ahmed v. Hungary* , Application no. 47287/15, Council of Europe: European Court of Human Rights, 14 March 2017, para 124, available at: https://www.refworld.org/cases,ECHR,58c968ad4.html: "*It thus appears that the authorities failed to provide the applicants with sufficient information on the procedure – an occurrence aggravated by the fact that they could not meet their lawyer prior to the court hearing in order to discuss their cases in detail*."

[31] See the following documents where UNHCR advocates for flexibility in timeframes in similar procedural circumstances: UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, page 31, available at: https://www.refworld.org/docid/5cb597a27.html; UN High Commissioner for Refugees (UNHCR), *UNHCR Statement on safe country concepts and the right to an effective remedy in admissibility procedures, Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of LH v Bevándorlási és Menekültügyi Hivatal (C-564/18)*, September 2019, paras. 23-25, available at: https://www.refworld.org/docid/5d7b842c4.html.

[32] *I.M. c. France*, requête no 9152/09, Council of Europe: European Court of Human Rights, 2 February 2012, para 147, available at: https://www.refworld.org/cases,ECHR,4f2932442.html.

As regards the right to translation/interpretation, UNHCR very much welcomes the requirement to ensure interpretation and provide copies of the relevant decisions to the person concerned in the language he or she understands. It seems however that Article 32(3) omits mentioning the first instance court of general jurisdiction (in its capacity as reviewer of the extradition decision, as per Article 26(2) of the Draft Law) when listing the courts which should ensure interpretation and provision of the issued decision in the language of the person concerned.

UNHCR recommends

- providing for a possibility to extend the judicial review timeframe under Article 26(2) of the Draft Law by the respective courts in case of exceptional circumstances making issuance of a decision impossible within the prescribed timeframes;
- modifying the first paragraph of Article 26(4) of the Draft Law as follows: "*The hearing of the case in the first instance court shall be conducted with participation of the person with respect to whom the decision on extradition has been made, and the hearing of the case in the Criminal Court of Appeal of the Republic of Armenia shall be conducted with participation of the person with respect to whom the decision on extradition has been made, unless he or she expressly requests to conduct the hearing in his or her absence*";
- adding the first instance court of general jurisdiction under Article 32(3) of the Draft Law among the courts which should arrange interpretation and provide the adopted decision in the language of the person requested for extradition within the framework of judicial review of decisions on extradition.

3.3. Obtaining consent for the transfer of a sentenced person

UNHCR notes that Article 53(1)(3) of the Draft Law requires the consent of a sentenced person to his or her transfer to the country of origin for the purpose of serving the remainder of a sentence. The same article stipulates that "*whenever, due to the sentenced person's age or physical or mental state, it is impossible to obtain his/her written consent, it is necessary to receive the written consent of his/her legal representative*". Application of this provision could be problematic when the concerned person is a refugee or an asylum-seeker, protected by the principle of non-refoulement.

UNHCR recommends adding a provision under Article 53(1)(3) of the Draft Law as follows: *"When such a person is an asylum-seeker or a refugee, no transfer is possible, even with the consent of a legal representative."*

Conclusion

UNHCR trusts that the relevant state authorities, the Government of the Republic of Armenia and the National Assembly of the Republic of Armenia will give due consideration to UNHCR's comments and recommendations. Given our previous successful experience, we believe that through a direct and open consultative process with relevant stakeholders, the Draft Law will be further enhanced to ensure that the relevant standards and safeguards are incorporated in accordance with obligations of the Republic of Armenia under international and regional refugee and human rights law. UNHCR remains available to provide further technical support, expertise and necessary clarifications.

UNHCR, September 2020