

UNHCR comments and recommendations on the draft proposed modifications to the Law No. 274 on integration of foreigners in the Republic of Moldova

On 1 November 2018, the draft amendments to Law no. 274 on integration of foreigners in the Republic of Moldova (“Law on Integration”) was approved for public consultations within the meeting of general state secretaries. On 6 November 2018, the Office of the United Nations High Commissioner for Refugees (UNHCR) received an invitation to share comments on the draft.

UNHCR offers these comments to the proposed amendments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and for assisting governments in seeking permanent solutions to the problem of refugees. Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, whereas Article 35 of the 1951 Convention relating to the Status of Refugees (“1951 Convention”)¹ and Article II of the 1967 Protocol relating to the Status of Refugees (“1967 Protocol”)² oblige State Parties to cooperate with UNHCR in the exercise of its mandate, in particular by facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in the 1951 Convention, as well as by providing comments on legislative and policy proposals impacting on the protection and durable solutions for refugees.

UNHCR would like to submit the following recommendations, with a view to ensuring that the proposed amendments are fully in line with international standards on refugee protection.

Diversification, decentralization and involvement of local authorities

UNHCR welcomes the numerous improvements that the draft amendments to the Law on Integration propose, including diversification and decentralization of services, as well as greater involvement of local authorities. These are fully in line with the Global Compact on Refugees endorsed by the General Assembly, which calls for the full engagement of local authorities and other local actors and the strengthening of their capacities and infrastructure.³

¹ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>.

² UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html>.

³ <http://www.unhcr.org/events/conferences/5b3295167/official-version-final-draft-global-compact-refugees.html>. Paras 37-38.

Vulnerable refugees

UNHCR would like to draw the Ministry's attention to the proposed changes to section 6 of the Law on Integration, entitled "special cases". The draft amendments envisage widening the scope of people considered vulnerable and includes a list of those categories that are considered vulnerable, which reflects the enumeration of vulnerable group provided under Article 20 (3) of the recast Qualification Directive ("QD").⁴ However, the enumeration contained in Article 20 of the QD is not exhaustive and it is clear from its wording that there may be other categories of vulnerable persons that are not explicitly listed. UNHCR suggests amending section 6 of the Law on Integration accordingly.

Further, early identification of vulnerable refugees is crucial. Such identification should already start at the outset of the asylum procedure. UNHCR in its report "Response to Vulnerability in Asylum" states that "[t]here is consensus that identifying and assessing need is most beneficial at an early stage of an asylum procedure as this facilitates the receipt of the specific social, psychological and medical assistance that may be required. In addition, early identification allows for the appropriate procedural safeguards to be instituted in order to ensure that vulnerable asylum-seekers are not disadvantaged in putting forward their asylum-claim".⁵

While the Response to Vulnerability in Asylum report does not propose one particular method for identifying vulnerable asylum-seekers and assessing their needs, it contains a number of principles regarding identification of vulnerability which should be considered when developing an identification mechanism in national context. UNHCR would like to draw the Ministry's attention to some of these principles, such as frontline or registration staff being sensitive to and trained on indicators of vulnerability and recording vulnerabilities on a checklist or the registration form.⁶ Other practical tools and examples of screening and referral mechanisms are further contained in chapter 5.2 of UNHCR's 10 Point Plan in Action.⁷

UNHCR recommends further developing the existing mechanism to identify vulnerabilities at the onset of the asylum procedure and throughout refugees' integration in Moldova. UNHCR stands

⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

⁵ UN High Commissioner for Refugees (UNHCR), Response to Vulnerability in Asylum - Project Report, December 2013, available at: <http://www.refworld.org/docid/56c444004.html>, page 9; see also art. 22 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>.

⁶ *Ibid.*, pages 40-41.

⁷ <http://www.unhcr.org/publications/manuals/5846d0207/10-point-plan-action-2016-update-chapter-5-mechanisms-screening-referral.html>.

ready to assist the Ministry with improving the identification mechanism based on the above principles.

Extended stay in designated accommodation

Section 25 of the Law on Integration provides that “(1) The beneficiaries of integration programs that have no means of subsistence can benefit, upon request, from accommodation in special areas designated for this purpose under the administration of the competent authority for foreigners. (2) The accommodation in the spaces provided in par. (1) can be offered for a period of up to 6 months, with the possibility of extending for another 3 months for well-founded reasons, without exceeding the implementation period of the integration program.” Point 11 of the proposed amendments suggests removing the text “for another 3 months”.

The right to adequate housing is grounded in international human rights law. The Committee on Economic, Social and Cultural Rights’ General Comment no. 4 on the Right to Adequate Housing provides that “[t]he right to adequate housing applies to everyone. (...) Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors.”⁸

Further, UNHCR in “Rights of Refugees in the Context of Integration: Legal Standards and Recommendations”, provides that it is important that governments plan for interim housing solutions for newly recognized refugees. In case permanent housing is not immediately available to newly recognized refugees, Governments must ensure that adequate temporary accommodation is available. It is recommended that such interim housing solutions be in place for an *extendable* minimum period of 6 months.⁹

⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, available at: <http://www.refworld.org/docid/47a7079a1.html>, para. 6.

⁹ UN High Commissioner for Refugees (UNHCR), *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, June 2006, POLAS/2006/02, available at: <http://www.refworld.org/docid/44bb9b684.html>. In particular Chapter 4 (Housing Rights), part B, para. 9. Temporary Accommodation Immediately Upon Recognition. “In some countries, asylum-seekers and other persons of concern are provided State accommodation in government reception centres. Once they are granted refugee status however, they must secure their own housing. Yet permanent housing may not be immediately available to newly recognized refugees. (...) In such situations, it is important that governments plan for an interim solution and ensure that adequate temporary accommodation is available. (...) This accommodation should be for a period sufficiently long to enable the refugee to identify and secure permanent housing. This period will vary depending on the housing situation in each country but an extendable minimum period of six months is recommended, (...) during which any rent charged should be either State-regulated, or commensurate with social benefits or entry-level wages.”

In light hereof, UNHCR recommends maintaining the possibility of a 3 months extension of designated accommodation, provided there is a well-founded reason – such as extreme vulnerability – to do so.

Reception conditions for asylum-seekers

Finally, UNHCR would like to take this opportunity to raise the challenges surrounding the conditions of reception of asylum-seekers. Integration measures often focus on people whose status has been recognized (beneficiaries of international protection, stateless people). However, integration of refugees is best achieved when efforts to include them into national schemes and opportunities are offered at an early stage of the asylum procedure.¹⁰ The sooner refugees are provided with the chance to develop their potential, the sooner they have the possibility to become self-reliant.

To this end, UNHCR recommends extending certain support measures to asylum-seekers as well. One possible way through which this could be achieved is by adding a provision to the Law on Integration through which some of the support measures included in the law, such as access to public social insurance, would also become applicable to asylum-seekers.

¹⁰ See for instance Organisation for Economic Cooperation and Development (OECD), *Making Integration Work: Refugees and others in need of protection*, 28 January 2016, available at: <http://www.refworld.org/docid/56af089d4.html>, at page 13. “One of the most important lessons to be learnt from OECD countries’ experience in the integration of humanitarian migrants is that early intervention is crucial (OECD 2014). (...) To ensure that activation and integration services can start as early as possible, it is crucial, first of all, to shorten the time needed to process applications for international protection. Where that is not feasible, countries may consider providing early assistance such as language and job-related training, civic integration courses, and skills assessments in reception facilities.”