



# **REGIONAL GUIDELINES**

## **on how to identify and refer refugees and asylum seekers at the borders of Central Asia**



## DRAFTING PROCESS OF THE REGIONAL GUIDELINES

Government representatives from the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and Turkmenistan gathered at the “Regional Conference on Protection-sensitive Border Management in Central Asia” in Almaty, Kazakhstan on 4 December 2015. As one of the conclusions, participants invited UNHCR to take the lead in the elaboration of Regional Guidelines on Referral Mechanism of Refugees and Asylum Seekers, utilizing the Almaty Process platform.

UNHCR proposed a collaborative process through which the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and Turkmenistan would come together to develop the **“Regional guidelines on how to identify and refer refugees and asylum seekers at the borders of Central Asia”** (Regional Guidelines).

These four States designated delegations of Technical Experts who participated in three regional meetings facilitated by UNHCR where the Regional Guidelines were developed.

- 1st Technical Experts Meeting» organized in Almaty, Kazakhstan, on 15 June 2016
- 2nd Technical Experts Meeting» organized in Dushanbe, Tajikistan on 26, 27 and 28 July 2016
- 3rd Technical Experts Meeting» organized in Ashgabat, Turkmenistan, on 3, 4 and 5 October 2016

The text of the Regional Guidelines was finalized by the Technical Experts and was presented to the international community during a 4th Meeting organized in Bishkek, Kyrgyz Republic on 29 November 2016 under the auspices of the Kyrgyz Chair of the Almaty Process.

## NATURE AND PURPOSE OF THE REGIONAL GUIDELINES

The present Regional Guidelines are a non-binding document developed by states for states. It is a regional authoritative source for policy-makers and legislators that collects the common vision of the Central Asian States on how to protect asylum seekers and refugees at the borders.

The Regional Guidelines are a direct product of inter-state dialogue promoted under the umbrella of the Almaty Process and supported by UNHCR through its Regional Representation for Central Asia.

The Regional Guidelines provide concrete recommendations on how States can identify persons in need of international protection and how to link this identification made at the border with concrete protection measures available in each jurisdiction. In other words, they suggest practical ways to go from legislation to practice on identification and referral mechanisms.

They also provide guidance on how these protection systems are beneficial to address legitimate security concerns of states while at the same time upholding fundamental principles of refugee protection.

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**on how to identify and refer**  
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**at the borders of Central Asia**

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## 1. INTRODUCTION

The concern of guaranteeing respect for the human rights of asylum seekers and refugees has been reiterated by the member States of the Almaty Process in multiple resolutions and initiatives, including the 2011 Almaty Declaration, in accordance with the national legislation and international obligations of particular states. All drafting states, i.e. Republic of Kazakhstan, Kyrgyz Republic, Republic of Tajikistan and Turkmenistan (hereinafter, Member States), have acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Central Asia is a region that contributes significantly to the stability and human security in the wider region and preserves a tradition of asylum since decades. Member States recognize asylum seekers and refugees as the holders of human rights that should be respected, and correspondingly recognize state's obligations to guarantee the enjoyment of these rights in compliance with international regulations, without detriment to the sovereign right of each state to apply its own migratory regulations.

The challenges of refugee protection have evolved historically and accordingly so have the responses provided by states in Central Asia. The situation today involves challenges related to the mixed nature of migration flows throughout the region.

Member States have initiated the process of improvement and harmonization of the response provided on the regional level when identifying and referring the persons to the competent authorities in charge of granting asylum in each state.

At the same time, Member States hold legitimate national security concerns that need to be addressed. These involve the border control and the migration control functions as well as other national security issues.

The first step towards effective protection is identifying those persons or groups of persons that, due to their characteristics, con-

ditions and/or personal history, are considered to be in need of international protection and thus could become asylum seekers and refugees. Once they have been identified, it is possible to activate procedures to provide protection and assistance.

Within this context, mechanisms to identify personal features of potential asylum seekers will facilitate providing assistance and managing their orderly access to protection in a timely manner, irrespectively if they attempt to cross a border individually, as a family or in larger groups.

Without prejudice of the obligations of each Member State, “Regional guidelines on how to identify and refer refugees and asylum seekers at the borders of Central Asia” (hereinafter, Guidelines, or Document) is a tool to support the ongoing efforts of the Member States to implement effective processes of preliminary identification and referral of potential asylum seekers at the borders of Central Asia.



## 2. OBJECTIVE AND NATURE OF THE GUIDELINES

These Guidelines have been drafted by experts designated by each Member State.

The Guidelines constitute a manual for law and policy makers in the development and implementation of the preliminary identification and referral mechanisms of potential asylum seekers at the state border.

The contents and principles of the Guidelines do not affect the rights, obligations or responsibilities of Member States enshrined in the international human rights law and international refugee law. The Guidelines provides concrete recommendations on how Member States can identify persons in need of international protection and how to link this identification process at the border with concrete protection measures available in each jurisdiction.

The Document also provides general guidance on effective application of these protection systems in combination with legitimate security interests of Member States, while upholding fundamental principles of refugee protection.

The Guidelines orient the implementation of the procedures of relevant national governmental institutions with direct or indirect competencies in the matter. Each Member State should implement activities required for coordination at the national and regional levels to ensure effective compliance with and implementation of the Guidelines.

Furthermore, the Document can be used in all the contexts affecting the interests of asylum seekers. This involves contexts in which potential asylum seekers try to cross the state borders individually or in large groups.

In order to ensure coherence of asylum seekers' protection systems with other protection frameworks, it is important that these recommendations are referred to or are coordinated with other

guidelines and protection frameworks at the national and/or the regional levels. This will result in dealing more effectively with cases of other persons with international protection needs, such as victims of trafficking or stateless persons.

### 3. DEFINITIONS

**Application for granting asylum or refugee status** – any oral or written declaration of an asylum seeker of a fear of serious violation of his/her rights in case of return to his/her country of nationality or former habitual residence, and indication that he/she needs to be protected in the country he/she has come to.

**Asylum** – the grant by a state of protection on its territory to people from another state who are fleeing persecution or risking serious violations of their human rights. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, and humane standards of treatment.

**Asylum seeker** – an individual who is seeking international protection whether as an individual or on a group basis, whose claim has not yet been finally decided on by the country in which he/she has submitted it.

**Emergency mass influx of asylum seekers** – an emergency related to large-scale arrival of foreign citizens and/or stateless persons over the state border or a territory (of a state), which makes it difficult or impossible to conduct individual refugee status determination procedures.

**Gender violence** – violence that is directed against a woman because she is a woman or that affects women disproportionately.

**Group status determination** – recognition of refugee status by a state in case of mass arrival of displaced persons based on readily apparent, objective circumstances in the country of origin.

**International protection** – provision of assistance and aid to persons, whose governments are unable or unwilling to protect their citizens. Individuals may suffer such serious violations of their rights that they are forced to seek safety in another state.

**International refugee protection** – actions taken by states and UNHCR on behalf of refugees and asylum seekers to ensure respect

of their rights, safety and well-being in accordance with recognised international standards. These actions include ensuring rights and safety of such persons, guarantee of observance of the principle of *non-refoulement*, implementation of fair refugee status determination procedures, observance of standards of humane treatment and delivery of long-term solutions.

**Mixed migration** – movements through which refugees, asylum seekers, victims of trafficking in persons, unaccompanied and separated children, economic migrants, and other categories of persons travel across state borders, including in unlawful manner, who may have different protection needs.

**National referral mechanisms** – established co-operative framework on providing international protection to asylum seekers and other persons in need of international protection by governmental and non-governmental institutions, and the process of decision-making in regards to these persons in accordance with national legislation.

**Non-refoulement principle** – refusal of forcible return (expulsion) of a refugee to a state, where he/she faces persecution on account of his/her race, ethnicity, membership of a particular social group, political opinion, religious beliefs, or where there is potential threat of such persecution, and refusal of creating obstacles in passing across the state borders to persons expressing fear of return to their country of origin.

**Persons in need of international protection** – asylum seekers, as well as victims of trafficking, stateless persons, and persons whose need for international protection has been recognized in international or regional human rights instruments.

**Refugee** – a person who is not a national of the country but is present in its territory owing to well-founded fear of being persecuted in his/her country of nationality or former habitual residence for reasons of race, religion, nationality, membership of a particular social group or political opinion or as a result of the conflict in the

country, and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country.

**Refugee status determination** – procedures undertaken by a state and/or UNHCR to determine whether an individual can be recognized as a refugee in accordance with national and international law.

**Separated children** – minors accompanied by persons, who are not their parents or legal guardians.

**Temporary protection** – a response mechanism in an event of mass influx of asylum seekers, which provides them with immediate protection from refoulement and ensures basic minimum standards of treatment.

**Unaccompanied children** – minors, who are not accompanied by parents or other legal representatives.

**Violence** – intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or various damages.

## 4. LEGAL SOURCES AND GUIDING PRINCIPLES OF INTERVENTION

Identification and referral of persons in need of international protection is the process, which precedes the formal procedure of status determination, and aims to identify the needs of and distinguish between different categories of persons or profiles within mixed movements. The main categories of persons with international protection needs include asylum seekers, victims of trafficking or torture. These may include persons with specific needs such as women at risk, unaccompanied or separated children, persons with mental or physical disabilities or impairment, and victims of gender-based violence.

The provisions on international protection are enshrined in several sources within the framework of international law that all Member States have ratified or acceded to:

- The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The Convention on the Elimination of All Forms of Discrimination Against Women;
- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights; and
- The United Nations Convention against Transnational Crime and its Protocols.

In addition to these international legal sources, all Member States have national legislation relating to border and immigration control management, and refugee status determination procedures. All these elements of national legislation provide

for effective means to protect refugees and asylum seekers in each jurisdiction.

According to these national and international legal sources, the main principles guiding the mechanisms of identification and referral of potential asylum seekers at the state borders are:

- Principle of access to the territory;
- Principle of non-penalisation for irregular entry or presence in the territory of a state;
- Principle of *non-refoulement*;
- Principle of access to asylum procedures;
- Principle of equality and non-discrimination;
- Principle of special protection for children and the principle of the best interest of the child;
- Principle of confidentiality and protection of personal information; and
- Principle of non-re-victimization.

## 5. METHODS OF IDENTIFICATION OF POTENTIAL ASYLUM SEEKERS AT THE STATE BORDER

Identification of asylum seekers and other persons with international protection needs starts from the first encounter of the authorised officer with the person attempting to cross the border. **The main elements of the identification and referral procedure include:**

- Providing information to persons at the state border;
- Collection of information;
- Counselling; and
- Referral of asylum seekers to the competent authorities or to the relevant procedures.

### 5.1 Carrying out the interview to determine if the person has international protection needs

After preliminary identification of a person with potential international protection needs, the next step is to conduct an individual interview (in line with the questions in Annex 1 to the Guidelines “Sample questions to identify persons in need of international protection”) in order to identify existence of such needs.

### 5.2 Recommendations for the interview

The following aspects should be considered upon preliminary identification prior to the interview:

- Ensure the safety of the interviewee and, if necessary, provide first aid (medical and psychological, food, sanitary and hygienic items, and other types of aid).
- Provide an interpreter when the interviewee does not understand what he/she is being asked or is unable to appropriately express his/her responses. In this case, the interview process should not continue until an interpreter is present. While this



occurs, the person should receive necessary aid and protection in an appropriate place.

- Ensure an appropriate space to conduct the interview in an individual manner, ensuring protection of personal information and confidentiality.
- Preferably, the officer conducting the interview should have been trained on implementation of the set identification and referral procedures and protocols.

### **5.3 Providing information to the interviewee**

The authorised officer conducting the interview should:

- Introduce him/herself and inform the interviewed person about the purpose of the questions that will be asked; and
- Clarify any doubts or questions of the interviewed person concerning his/her personal situation.

In addition, information regarding the asylum system should be available at all border crossing and immigration control points in a place visible and accessible to all visitors. This information should be available in the languages used by the main potential groups of asylum seekers in each country. The information materials should include description of the asylum procedures and the contact details of the competent state authorities, as well as of non-governmental organisations working on refugee/ asylum matters and of the UNHCR.

### **5.4 Identifying the profile of a potential asylum seeker**

The wish or intention to apply for protection does not need to be expressed by the person in any particular form. There is no need to use words “asylum” or “refugee status”; the defining element is the expression or indication of fear of what may happen to the person upon return, often linked to what he/she has experienced in the country of origin before departure.

The persons may express their need in international protection through various expressions or words, e.g.:

- They have been persecuted or are in fear of persecution (on account of race, religious beliefs, ethnicity, political opinion, membership of a particular social group); or
- They are afraid of being persecuted or killed in the result of armed and ethnic conflicts; or
- They want to “see the UN” (i.e. UNHCR); or
- They are afraid to return to their home country.

From the moment a person expresses or indicates the need of protection in front of an officer of the border guards or of other immigration control agencies – in any manner – the person is considered an asylum seeker and the principle of non-refoulement is applicable. This means that the person cannot be returned or put in a position that will make him/her go back to the country of origin.

If the interview reveals that the person is not a potential asylum seeker, the decision on his/her case is to be made in accordance with the national legislation of the Member State.

## **5.5 Interviewing persons with specific needs**

Some persons in need of international protection may have specific needs that should be taken into consideration during the interview by ensuring proper standards of treatment and specialized referral mechanisms:

- When the person is a child, especially if unaccompanied or separated from legal representatives;
- When the person is unaccompanied and has physical or mental disability;
- When the person shows evident physical health problems (dehydration, malnutrition, extreme weakness, bruises, fractures, mutilations, etc.);

- When the person is upset or in shock, disorientation, fear, extreme anxiety, tears;
- When the person shows signs or express that he/she does not know in which country he/she is;
- When the person is suspected to be controlled or watched by the person accompanying him/her, including situations where communications is mediated through a third person; and
- When the person is in obviously vulnerable situation or with whom it is not possible to communicate fluently due to language barrier.

Health needs and other needs requiring immediate assistance should be addressed prior to requesting information from a person. If a person requires emergency medical care, the priority is to provide such care to the person or to refer this person to an appropriate facility where these emergency medical services are available. Once the urgent needs have been met, the identification process may be continued.

An officer undertaking preliminary identification needs to take into account that a potential asylum seeker can additionally fall under other categories of persons with international protection needs, with regard to whom special referral mechanisms should be considered.

## 6. REFERRAL TO SPECIALIZED PROTECTION AND ASSISTANCE AGENCIES

If a person is identified as a potential asylum seeker at the state border, representatives of the competent state authorities will ensure access to the refugee status application procedures at the state border. The possibility of enabling access to asylum procedures at the border crossing or other immigration control points agencies is of paramount importance, in order to ensure that the persons preliminary identified as in need of international protection are referred effectively to the competent state authorities according to the set national asylum procedures, and in order to ensure that the principle of non-refoulement is respected.

Additionally, ensuring access to asylum applications at the state border guarantees that the person is provided with a personal status (asylum seeker), which prevents refoulement and ensures access to humanitarian assistance programmes that may be available for asylum seekers in the state.

Refugee status applicants should be **directly referred to the competent national authority in charge of refugee status determination**. In addition, the person should be informed about the existence of UNHCR, if available in the country, and/or its partner organizations.

Persons with specific needs should be referred in a priority manner.

### 6.1 Categories of persons with specific needs

#### **Unaccompanied or separated children**

If the potential asylum seeker is an **unaccompanied or separated child**, he/she should be also referred to the competent government agency in charge of providing protection and assistance to children, including providing basic needs, accommodation appropriate for children and temporary guardianship arrangements for the duration of

the respective procedure. The corresponding state authority should be aware of the international protection needs of the child and should facilitate the proceedings with the state authority in charge of determining refugee status.

For minor persons travelling with their parents or a legal representative accompanying them, who (minors) may be at risk or in danger of abuse or violence, should be referred to the competent state authority in charge of child protection in accordance with existing legislation of the state.

### **Victims of trafficking**

If the potential asylum seeker is a person suspected to be a **victim of the crime of trafficking in persons**, the person should be referred to the competent state authority in charge of protection of victims of trafficking. In such cases prevention of trafficking is the first protection priority.

The competent state authority in charge of protection of victims of trafficking in persons addresses international protection needs of the person through the national referral mechanism, and refers the person to the competent state authority in charge of refugee status determination.

### **Other categories of persons with specific needs**

Other categories of persons with specific needs include elderly persons, persons with mental or physical disabilities, victims of violence or torture, and women at risk of violence or survivors of violence. They should be referred to the appropriate institution to receive the necessary treatment and care as provided for in the national legislation.

## 6.2 The National reference guide for the referral of asylum seekers, refugees and other persons in need of international protection

In order to ensure that the referral process is effectively handled by the authorized officers receiving the persons at the border, the competent state authorities need to keep an updated “National reference guide for the referral of asylum seekers, refugees and other persons in need of international protection” (hereinafter, National Reference Guide) attached to the back of the questionnaire used for the preliminary identification interview. The National Reference Guide is a directory with the names and contact details of the relevant authorities to which the border guards or other immigration control agencies will refer asylum seekers and refugees in accordance with their individual profiles or detected vulnerabilities. In addition to the directory, the National Reference Guide needs to provide concise instructions to the officers of the border guards and other immigration control agencies on how to operate with it.

The minimum information that the National Reference Guide should contain is the following:

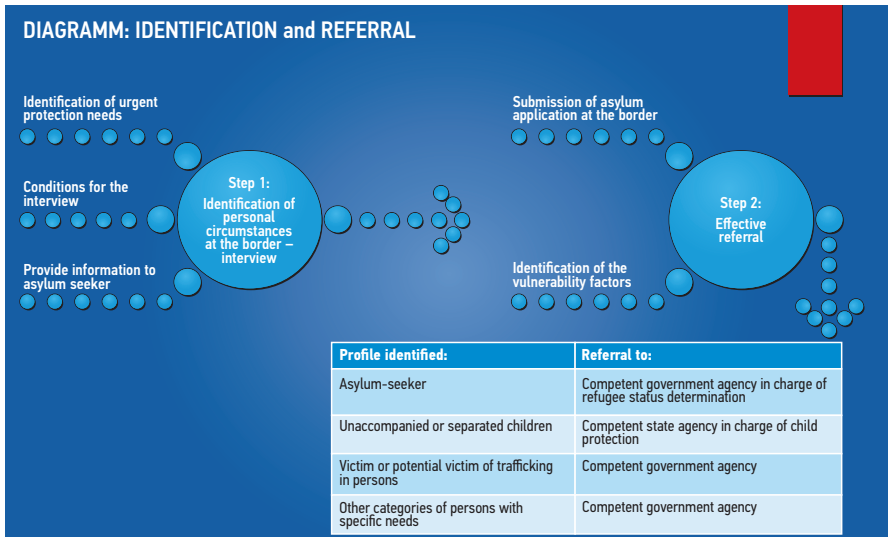
- Name of the competent government agency in charge of **refugee status determination**, general description of the services provided, name of the department/ unit, contact telephone number, address, and working hours. If there is a duty officer/ hotline in place, the telephone number needs to be indicated as well.
- Name of the competent state agency in charge of **child protection** in the country, general description of the services provided, name of the department/ unit, contact telephone number, address, and working hours. If there is a duty officer/ hotline in place, the telephone number needs to be indicated as well.
- Name of the competent government agency in charge of **protection of victims of trafficking**, general description of the services provided, name of the department/ unit, contact telephone number, address, and working hours. If there is a duty officer/ hotline

in place, the telephone number needs to be indicated as well.

- Name of the **competent government agencies, international, non-governmental and public organizations in charge of implementation of assistance and support programmes for refugees and asylum seekers** (including initial acceptance, reception and accommodation), general description of the services provided, name of the department/ unit, contact telephone number, address, and working hours. If there is a duty officer/ hotline in place, the telephone number needs to be indicated as well.
- Information about UNHCR office in the state, general description of the services provided, name of the department/ unit, contact telephone number, address, and working hours. If there is a duty officer/ hotline in place, the telephone number needs to be indicated as well.

It is recommended for a state to assign a competent agency in charge of updating information in the National Reference Guide when necessary.

### 6.3 Diagram of the identification and referral



## 6.4 Referrals during mass influx situations

During mass influx of asylum seekers at the state border, it is recommended for the national authorities to follow the national contingency plans. These plans clearly determine roles and responsibilities of the governmental and non-governmental institutions involved in responding to mass influx of persons in need of international protection. As in situations of individual arrivals, ensuring access to the territory and respecting the non-refoulement principle come as the fundamental obligations of the receiving states. Provision of basic humanitarian assistance should be ensured, in order to minimize not only the risks faced by the displaced persons, but also to minimize the impact of such influx on the states and communities that receive and host a large number of new arrivals.

Two approaches to legal protection are recommended in the situations of mass influx:

- “Group status determination”. In the process of group determination of refugee status ensuring safety, protection from refoulement and humane treatment should be taken into consideration.
- “Temporary protection and stay”. When providing temporary protection and stay delivery of necessary/urgent aid, ensuring protection from refoulement, application of basic minimum standards of humane treatment in accordance with basic human rights should be taken into consideration.

As mentioned above, ensuring needs of asylum seekers at the state border in situations of mass influx requires a comprehensive approach. It is recommended to clearly divide and enshrine responsibilities of governmental and non-governmental institutions, and the framework of their coordination through national contingency plans for the situations of mass influx of asylum seekers.



## **7. THE ROLES OF THE MAIN ACTORS INVOLVED IN THE PROCESS OF IDENTIFICATION AND REFERRAL OF ASYLUM SEEKERS**

### **7.1 The role of border guards and other immigration control agencies**

In line with Member States' international obligations and national legislations, officers of the border guards and other immigration control agencies should ensure the best available protection and assistance to all asylum seekers by conducting the following actions:

- Timely identification of persons in need of protection;
- Screening and identification of specific needs of various categories of persons;
- Provision of information on the relevant national procedure in line with the national legislation in a language the person understands;
- Referral to the competent government agency for follow-up actions in line with the relevant laws and regulations; and
- Registration of the application for refugee status in the border crossing points in case of lack of grounds for entry.

### **7.2 The role of the competent government agencies in charge of granting asylum**

In line with Member States' international obligations and national legislations, the role of the competent asylum authorities is to ensure that every person preliminary identified as an asylum seeker receives complete information regarding the refugee status determination procedures, and on the availability of services and assistance accessible to such person during the initial reception phase.

In addition, the role of these agencies is to activate the national procedure on refugee status determination in order to identify who is really a refugee, and to provide asylum seeker (claimant) response within the timeframe established by the national law.

The competent government agency provides refugee with information on his/her rights and duties in the territory of the state.

### **7.3 The role of UNHCR**

The United Nations High Commissioner for Refugees (UNHCR) has a global mandate to lead and coordinate international actions to protect refugees on the global scale and resolve refugee problems. In particular, it assists governments to meet their international obligations in the sphere of refugee protection and to establish national systems in line with relevant national legislation and international human rights standards. UNHCR strives to ensure that refugees have access to fair asylum and refugee status determination procedures, that they are protected against refoulement and are given the possibility to achieve a durable solution to their refugee situation by either voluntarily return to their country of origin or by integration in their country of asylum or in a third country. Under the 1951 Convention Relating to the Status of Refugees (Article 35) states undertake to cooperate with UNHCR in the exercise of its functions in supervising the application of the provisions of the 1951 Convention. UNHCR is also mandated to identify, prevent and reduce statelessness and protect stateless persons.

UNHCR will continue to provide technical and legal support to the Member States to further develop and improve their national asylum systems in order to bring them in line with the international standards required for states parties to the 1951 Convention. National asylum systems are meant to include the mechanism of identification and referral of asylum seekers from the border. UNHCR's support could also take a financial form, in

ongoing and future projects implemented in the Member States, including situations of mass influx of asylum seekers at the state borders.

## **8. HOW CAN IDENTIFICATION AND REFERRAL MECHANISMS SUPPORT NATIONAL SECURITY SYSTEMS**

Protection of asylum seekers/ refugees and national security are cooperating systems, which collectively make substantial contribution to maintaining security, stability and development of the Member States, and observance of human rights and freedoms.

### **8.1 Exclusion from refugee status of persons undeserving of protection**

The system of international refugee law has been developed in such a way that only those who deserve protection get the refugee status. In cases where the state authority determining the refugee status has serious reasons to consider that the applicant committed crimes of certain gravity as exhaustively enumerated in Article 1F of the 1951 Convention, provisions of the Convention will not apply to such person, even if the applicant meets the criteria in Article 1A of the 1951 Convention.

### **8.2 Obligation to abide by the law**

Asylum seekers and refugees fulfil obligations and bear responsibility on equal grounds with other persons in the territory of the state, and shall provide true information about themselves that is necessary to make decision on their legal status.

### **8.3 *Non-refoulement***

Member States will not expel refugees lawfully residing in their territory unless for the reasons of state security or public order:

- 1) When there are serious reasons for considering that a refugee constitutes danger to the state's security;

- 2) When a refugee have been convicted by a final judgement of a particularly serious crime committed in the asylum state and constitutes danger to the society of this state.

Other human rights obligations remain to apply to the state, including obligations to protect a person from return to the state, where he/she can be subjected to torture, inhuman or degrading treatment.

#### **8.4 Civilian and humanitarian character of asylum**

In order to preserve the national security interests, as well as to preserve the integrity and civilian character of the asylum system, strict controls need to be in place to separate armed persons or combatants from refugees.

In this vein, actions taken by states to ensure respect for the civilian and humanitarian character of asylum should be guided by the following principles:

- Respect for the right to seek asylum and for the fundamental principle of *non-refoulement*.
- Armed elements need to be identified and disarmed as soon as possible by means of a careful screening process, preferably at the border crossing point or at the first reception/ transit centre for the new arrivals.
- After taking away any arms individual armed elements need to be separated from the refugee population. It is recommended that refugee camps and settlements should benefit from adequate security arrangements to deter infiltration by armed elements and from the strengthened law and order.
- Once separated from the refugee population, armed persons and combatants should be interned at a safe location.
- Armed persons and combatants should not be considered as asylum seekers until the moment when the competent government agencies have established that such persons have

genuinely and permanently renounced military activities. Once this has been established, special procedures should be put in place for individual refugee status determination in frames of the general refugee status determination process. In order to avoid abuse of the asylum system by those, who do not deserve international protection, utmost attention should be paid to the facts of: a) commitment of a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; b) commitment of a serious non-political crime outside the country of asylum prior to his admission to that country as a refugee; c) commitment of acts contrary to the purposes and principles of the United Nations.

Host states should develop operational guidelines to exclude those individuals, who are not deserving of international refugee protection, for situations of individual refugee status determination or situations of mass influx of asylum seekers at the state border.

### **8.5 Sharing of data on asylum seekers among Member States**

In their efforts to address national security concerns and to ensure that there is no abuse of the asylum system states may find useful sharing information in respect of certain individuals between the competent government agencies.

Sharing of data between states depends on the type of agreements established between the states, but such agreements shall be in line with established principles and standards of data protection. In addition, due consideration should be given to what is permissible under international refugee law and international human rights law. In accordance with the existing legislation, any data request or sharing of data should be specific and individualized, and with concrete justification on the part of the requesting state agency dealing with the individual case.

In addition, states should be aware that information on asylum seekers should not be shared with the authorities of the country of origin of the asylum seeker, as such information sharing may lead to further persecution of the applicant. Information provided in an asylum claim should not be shared with other parties either, without the consent of the asylum seeker. This could endanger the safety of the asylum seeker or his/her family members remaining in the country of origin.

## 9. BASIC RECOMMENDATIONS FOR IMPLEMENTATION

In order to effectively implement these Guidelines, Member States should:

- Develop a national referral mechanism with due consideration of coordination and cooperation of governmental institutions.
- Provide specific training to strengthen human resources' capacity on the referral mechanism, and to conduct informational campaigns on the national referral mechanism.
- Promote the conclusion of institutional agreements with the UNHCR Offices in the region and the relevant governmental institutions, according to the national legislation, aiming at enforcement of these Guidelines (e.g. cooperation agreements, memorandums of understanding, etc.).
- Consider designing and implementing concrete projects aimed at enforcement of these Guidelines according to the priority order of different areas for each state.



## 10. LIST OF ANNEXES

Annex 1: Sample questions to identify persons in need of international protection.

Annex 2: Template of “National reference guide for the referral of asylum seekers, refugees and other persons in need of international protection”.

## ANNEX 1

### Sample questions to identify persons in need of international protection

1. When did you leave your country of origin and residence?
2. Where did your journey begin?
3. Specify the places or countries through where you have been since your departure:

Country	Duration of the stay	Means of transportation	Comments

4. Do you know in which country you are now? When did you arrive and where did you enter? (if applicable)
5. Why did you leave your country of origin?<sup>1</sup>
  - Flight from harm or fear of harm \*
  - Persecution \*
  - Persecution due to my ethnicity\*
  - My life, freedom or personal integrity are at risk \*
  - Indiscriminate violence \*
  - Domestic violence \*
  - Armed conflict \*
  - Disruption of public order \*
  - Discrimination \*
  - An employment promise or offer by a third person +
  - Deception +

1 \*(asterisk) Indicates that the person could be a refugee or a potential asylum seeker and therefore, should be referred to the relevant national process. Furthermore, the person should be informed about the existence of UNHCR.

+ (cross) Indicates that the person could be a victim of trafficking and, therefore, the national protection mechanism should be activated.

- A promise of a third person linked to the country of destination +
  - Education opportunity
  - Seeking employment and better living conditions
  - Visiting family or friends
  - Family reunification
  - Marriage
  - Natural catastrophe or climatic situation
  - Other (specify):
6. Did anyone or anything forced you to leave your country?  
Yes (  ); No (  )
7. How did you leave your country of origin or residence?
- Through my own means
  - With help from another person+
  - I paid someone+
  - In an involuntary manner (abduction, coercion, sold by someone+\*)
  - Other (specify):
8. Have you been subject to threats, mistreatment, physical violence, extortion, or psychological or sexual violence by the person that contacted, helped, transferred, or sheltered you?  
Yes (  ); No (  )
9. Did you have any documents at the beginning of your journey? Specify if a person or authority has taken them or withheld them.
10. Was this country your final destination when you began your journey?  
Yes (  ); No (  )
11. If not, specify which your final country of destination is and why:
12. Do you wish to return to your country of origin?  
Yes (  ); No (  )
13. Do you see any problems in case if you return to your country?  
Yes (  ); No (  )

14. What do you think will happen if you had to go back to your country or origin?

- Detention\*
- Prosecution
- Physical violence\*+
- Sexual violence or gender-based violence\*+
- Fear of reprisal+
- Persecution\*
- Discrimination\*
- Other (please specify):

## ANNEX 2

### National reference guide for the referral of asylum seekers, refugees and other persons in need of international protection

Template

Contact information of the competent government agency in charge of **refugee status determination**:

Name of the authority	
General description of the services provided	
Department / unit	
Telephone number	
Address	
Working hours	
Hotline / duty officer telephone number	

Contact information of the competent government agency in charge of **child protection**:

Name of the authority	
General description of the services provided	
Department / unit	
Telephone number	
Address	
Working hours	
Hotline / duty officer telephone number	

Contact information of the competent government agency in charge of **protection of victims of trafficking**:

Name of the authority	
General description of the services provided	
Department / unit	
Telephone number	
Address	
Working hours	
Hotline / duty officer telephone number	

Contact information of the competent government agency in charge of **protection victims of violence or vulnerable persons** *(as appropriate)*:

Name of the authority	
General description of the services provided	
Department / unit	
Telephone number	
Address	
Working hours	
Hotline / duty officer telephone number	

Contact list of **state agencies or organizations that count with assistance and support programmes for refugees and asylum seekers**:

Name and address	Telephone or email	Brief description of assistance that can be provided

Contact information of the **United Nations High Commissioner for Refugees – UNHCR** in the country *(as appropriate)*:

Name of the authority	
General description of the services provided	
Name of the contact person	
Telephone number	
Address	
Working hours <sup>2</sup>	

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<sup>2</sup> If there is a duty officer in place the telephone number of the duty officer needs to be indicated as well.

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