



**TRIPARTITE MEMORADUM OF UNDERSTANDING**

**ON MODALITIES OF MUTUAL CO-OPERATION AND COORDINATION TO**

**SUPPORT THE ACCESS OF ASYLUM SEEKERS TO THE TERRITORY OF,**

**AND THE ASYLUM PROCEDURES OF THE REPUBLIC OF HUNGARY**

**PREAMBLE**

The Headquarters of the Border Guard of the Republic of Hungary (Border Guard), the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Poland, Slovakia and Slovenia (UNHCR) and the Hungarian Helsinki Committee (HHC), as UNHCR's duly authorised implementing partner NGO, hereafter referred to as the "Co-operating Parties",

**Recognizing** that the right of all persons to seek and enjoy in other countries asylum from persecution is a basic right enshrined, *inter alia*, in Article 14(1) of the 1948 Universal Declaration of Human Rights,

**Recalling** the United Nations Convention Relating to the Status of Refugees adopted on 28 July 1951 (Convention) and the Protocol Relating to the Status of Refugees adopted on 31 January 1967 which entered into force in the Republic of Hungary through the promulgation by Law Decree 15 of 1989; in particular Article 1 concerning the definition of the term refugee, Article 31 concerning refugees unlawfully in the country of refuge and Article 33 concerning the prohibition of expulsion or return ("refoulement") of refugees,

**Recalling** Article 35 of the Convention obliging contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, in particular providing in appropriate form information and statistical data requested concerning the condition of refugees, the implementation of this Convention, and law, regulations and decrees which may relate to refugees,

**Recalling** that the United Nations General Assembly Resolution 428(V) of 14 December 1950, which adopted the Statute of UNHCR, ascribes to the High Commissioner the function of providing international protection to refugees, including promoting the admission of refugees, not excluding those in the most destitute categories, to the

territories of States Parties to the Convention, and of seeking permanent solutions for the problems of refugees,

**Recalling** the Constitution of the Republic of Hungary and in particular Article 65 which provides the right to seek asylum,

**Recalling** that Act CXXXIX of 1997 on Asylum and Act XXXIX of 2001 on Entry and Stay of Foreigners of the Republic of Hungary as well as their implementing decrees, outline specifically the rights of persons in need of protection in the Republic of Hungary,

**Considering** that ensuring access to the territory and asylum procedures, constitutes the most efficient and effective way to provide protection to refugees, asylum-seekers and others of concern (persons in need of protection), and that Conclusions 22 (Session XXXII), 71 (Session XLIV), 74 (Session XLV), 81 (Session XLVIII), and 82 (Session XLVIII), of the Executive Committee of the High Commissioner's Programme set out internationally accepted principles and standards governing the protection of refugees in this regard,

**Bearing** in mind the importance of the co-operation agreement signed by the Peoples Republic of Hungary and UNHCR on 4 October 1989, which entered into force through the promulgation by Government Decree 23/1990. (II.7.) and which this memorandum of understanding does not in any shape or form amend,

**Recognising** the need to return persons found not to be in need of international protection in a humane manner and in full respect for their human rights and dignity, without resort to excessive force and, in the case of children, taking due account of their best interests,

**Referring** to Section 37 of Act XXXII of 1997 on Guarding the State Border and on the Border Guards stipulating that the Border Guard shall cooperate, among others, with NGOs and recognizing the need to define the concrete procedures and modalities of mutual cooperation and coordination among the parties through an agreement which will strengthen the partnership of the cooperating parties,

Have agreed to carry out a joint activity that will be guided by the following principles and modalities:

### Article I

#### **ESTABLISHMENT OF A MONITORING FRAMEWORK**

1. With due regard to the principle that the State has the primary responsibility of ensuring that persons in need of protection have access to the territory and asylum procedures, the Co-operating Parties undertake to jointly and severally monitor the facilitation by the Border Guard of the entry of persons in need of protection

to the territory of, and access to the asylum procedures of the Republic of Hungary as well as their protection against *refoulement* (monitoring).

2. The Co-operating Parties will undertake the process of monitoring in an orderly, humane, safe and dignified manner as dictated by the sensitivities needed to treat persons in need of international protection.
3. In accordance with the principle of family unity, the Co-operating Parties shall make every effort to ensure that asylum seeking families are admitted into the territory and asylum procedure as units.

## Article II

### **RESPONSIBILITIES OF THE BORDER GUARD**

1. The Border Guard undertakes to guarantee and facilitate the admission of persons in need of protection into the territory of the Republic of Hungary, and as a cooperating agency in refugee affairs, facilitate access to the asylum procedures and will take, in consultation with the UNHCR and HHC, all measures necessary to uphold these fundamental principles of international protection.
2. The Border Guard will take all measures necessary to ensure that asylum seekers are in full knowledge of facts about their right to seek asylum and their right to access legal assistance in the Republic of Hungary. It also undertakes to make available the publications of UNHCR and HHC in areas which are accessible to persons of concern under its procedures.
3. The Border Guard, with the consent of the person concerned, shall facilitate unsupervised contact among UNHCR, HHC and the person concerned to allow for the monitoring forming the subject matter of this agreement. Persons carrying out monitoring are allowed, with the consent of the persons concerned, to look into the file of the foreigner and may make photocopies of it. They are allowed to use audio, video and photographic recording equipment, except where such use would jeopardise the security or safety of the facility. The intention to use such equipment shall be communicated in advance to the Border Guard staff designated to receive and escort the monitors.
4. The Border Guard undertakes to provide access to photocopies of files of pre-designated categories (citizenship and themes), in accordance with its technical means. The photocopies of documents shall be shared with the monitors without the personal identification details of the person concerned.
5. The Border Guard undertakes to provide statistical data from its records upon the request of UNHCR or HHC concerning aliens policing and refugee matters.

### **Article III**

#### **RESPONSIBILITIES OF UNHCR REGIONAL REPRESENTATION**

1. The UNHCR shall have free and full access to asylum seekers and persons of concern; it is entitled to examine whether or not the Border Guards facilitate entry of persons in need of protection into the territory of, and asylum procedures of the Republic of Hungary through monitoring the related activities of the Border Guard.
2. The UNHCR will undertake monitoring visits to areas and places defined in Article VI where persons in need of protection may be located, to examine and verify the implementation and adherence to international protection standards. In case of the need for immediate protection intervention, UNHCR will inform the local competent Senior Officer as well as the Head of the Department for Aliens Policing and Minor Offences at the Border Guard Headquarters.
3. The UNHCR shall verify Border Guard procedures to ensure those persons in need of protection with special needs, including women heads of households, unaccompanied and separated children, are protected and their fundamental rights, in particular the principle of family unity, are respected.
4. The UNHCR shall coordinate the mobilisation of funds for this project from the international community.

### **Article IV**

#### **RESPONSIBILITIES OF HHC**

1. The HHC will undertake activities to facilitate the implementation of this agreement on behalf of UNHCR and as specified in a partnership agreement with UNHCR. The said partnership agreement shall contain the terms and conditions under which HHC will conduct its activities under this agreement.
2. The HHC will proceed with a UNHCR partnership authorisation letter in its possession and will implement activities stipulated in III. 1-3. The letter of authorisation (Annex 1) valid until withdrawal will be forwarded to the Head of the Aliens Policing and Minor Offence Department of the Border Guard Headquarters for his/her countersignature.
3. The monitoring staff of the HHC shall clearly identify themselves as such to those persons of concern whom they may wish to interview during the course of implementing this agreement, and shall inform them of the purpose and voluntary nature of the interview and their right to refuse to be interviewed if they so wish.

The monitoring staff shall comply with requirements related to the provision of information stipulated by Section 6 (2) of Act LXIII of 1992 on the Protection of Personal Data and Publicity of Data of Public Interest. A note shall be made on the fact that the person in need of protection was informed as well as the manner of giving his/her consent (Annex 2). The note shall be signed by the person of concern, the monitor and the interpreter, in case an interpreter was involved and included in the individual file of the person concerned.

4. HHC shall monitor the accessibility of UNHCR and HHC publications; in case of need it shall replenish the supply.
5. HHC shall inform UNHCR and the Border Guard about the monitoring visits two working days before the commencement of the visits, specifying the dates and the locations. If an interpreter is involved, it will attach a letter of authorization as per Annex 3.
6. Reports made on the monitoring visits shall be shared with all Co-operating Parties within 15 days, and any one of them may offer comments, suggestions and clarifications for consideration and inclusion within 30 days from the date of receipt of the HHC draft report. The content of these reports may only be published after prior notification to the other Co-operating Parties, in case of a disagreement on the contents of the report to be published, the dissenting opinion or position of the relevant Co-operating Party will also be published in the same report.

#### Article V

#### **TRIPARTITE WORKING GROUP**

1. The Co-operating Parties establish a Tripartite Working Group (Working Group) which shall supervise the implementation of this agreement and analyse the reports made of the monitoring.
2. The Working Group shall meet at least four times a year, extraordinary sessions may be convened at the express request of one of the Co-operating Parties. It shall adopt its own Internal Rules of Procedure.
3. The chairperson of the Working Group shall be from the Border Guard; UNHCR Regional Representation shall act as secretary and may be assisted in this role by a representative of HHC. The Working Group shall be composed of representatives of the Co-operating Parties who shall be accompanied at any meeting by such number of advisors as the party represented may deem necessary. Having signed the agreement, the principals of the Co-operating Parties shall forward within 8 days the names and contact details of representatives designated to be members and principals of the Working Group.

4. Meetings of the Working Group shall be recorded in notes. The Co-operating Parties shall receive the notes within 10 working days.
5. The Working Group may undertake visits or missions to locations relevant to the project.

#### Article VI

#### **SITES COVERED BY THE AGREEMENT, THE RULES OF ENTRANCE AND STAY THERE**

1. The geographical scope of the agreement shall cover all facilities administered by the Border Guard where persons in need of protection may stay (short term detention facilities, areas designated for contacts/meetings within long term detention facilities, areas where foreigners prevented to enter are to stay until departure/return in a border guard field office) and areas where the entry into the territory of foreigners is facilitated, including in the so-called transit zones of the international airports open for public.
2. When HHC announces forthcoming monitoring visits, it shall communicate the names, date of birth, place of birth and identity document numbers of both monitors and interpreters, in order to facilitate the timely preparation of entry arrangements into the facility where the monitoring will occur. Entry into such facility shall only be facilitated for holders of the UNHCR authorization letter and appropriate identity documents, after the necessary information sharing has occurred.
3. A designated Border Guard staff member shall always accompany the monitor and the interpreter. Without such escort, monitors and interpreters are not authorised to move in facilities and areas administered by the Border Guards, with the exception of interviews with persons of concern which are not subject to supervisory control.

#### Article VII

#### **FINAL PROVISIONS**

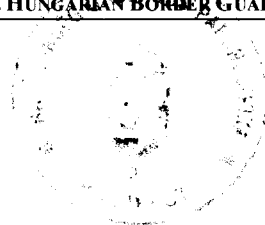
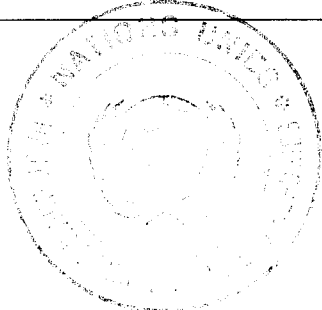
1. The Co-operating Parties undertake to pursue joint educational and awareness raising activities within the framework of this Agreement, especially on monitoring, principles of refugee law and international protection that enhance the access to territory of the Republic of Hungary as well as to the asylum procedures of persons in need of international protection.

2. The Co-operating Parties undertake to participate in regional review meetings which will be organized by UNHCR to exchange experiences with other partners and counterparts and by doing so to strengthen the implementation of the monitoring programme.
3. The present agreement is for an indefinite period. The review or the amendment of the Agreement may be initiated by the Cooperating Parties any time.
4. The Border Guard can temporarily suspend the implementation of the agreement in one or several locations covered by the agreement due to reasons of public health or any other emergency situation by providing justification.
5. The termination of the agreement can be initiated by submitting a written notice of termination by one Co-operating Party to the other two, which notice shall become effective at the end of eight (8) days from the latter date of receipt of notice by either of the other two Co-operating Parties.
6. Any question arising out of the interpretation or application of the present Agreement, or for which no provision is expressly made herein, shall be resolved amicably through consultations between the Co-operating Parties.
7. The present Agreement does not amend in any shape or form previously existing agreements between the Co-operating parties without the express and written consent of the parties concerned.
8. The present Agreement shall enter into force on date of signature by the Co-operating Parties.

In witness whereof, the authorized representatives of the Co-operating Parties have hereby signed the present Agreement.

Done at Budapest, this <sup>28</sup>.....day of <sup>Dec</sup>.....2006 in sets of three originals in the English and Hungarian language, each set being equally authentic.

<p>On behalf of United Nations High Commissioner for Refugees:</p> <p><i>Lloyd Dakin</i></p> <p><b>LLOYD DAKIN</b> REGIONAL REPRESENTATIVE FOR HUNGARY, POLAND, SLOVAKIA AND SLOVENIA</p>	<p>On behalf of The Headquarters of the Hungarian Border Guards:</p> <p><i>János Fényes</i></p> <p><b>BÉNYE JÓZSEF</b> LIEUTENANT GENERAL SENIOR COUNSELLOR COMMANDER OF THE HUNGARIAN BORDER GUARDS</p>	<p>On behalf of The Hungarian Helsinki Committee:</p> <p><i>Közseg Ferenc</i></p> <p><b>KÖZSEG FERENC</b> PRESIDENT OF THE HUNGARIAN HELSINKI COMMITTEE</p>
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**Magyar Helsinki Bizottság**  
Hungarian Helsinki Committee  
1054 Bp., Bajcsy-Zs. út 36-38. I/12.  
Telefon/Fax: 321-4141  
Adószám: 19013983-1-41

**AUTHORIZATION**

The  
Regional Representation of the United Nations High Commissioner for Refugees  
for Hungary, Slovakia, Slovenia and Poland

Hereby authorizes

The Hungarian Helsinki Committee

To act on behalf of UNHCR and implement the Tripartite Memorandum of Understanding on Modalities of Mutual Co-operation and Coordination to Support the Access of Asylum-Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary concluded by the Border Guards of the Republic of Hungary, the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Slovakia, Slovenia and Poland and the Hungarian Helsinki Committee.

Done at Budapest, this ..... day of .... 200

.....  
UNHCR

The person designated by the Hungarian Helsinki Committee to implement this authorization:

NAME:.....  
POB, DOB:.....  
ID card number:.....

This authorization is valid until withdrawal.  
Budapest, .....200..

.....  
Hungarian Helsinki Committee

Countersigned:

.....  
Headquarters of the Border Guard  
Head of the Head of the Aliens Policing and Minor Offence Department



**S T A T E M E N T**

NAME:.....

POB, DOB:.....

CITIZENSHIP:.....

Hereby approve that representatives of UNHCR and HHC present here:

NAME:.....

POB, DOB:.....

ID CARD NUMBER:.....

- |                         |     |    |
|-------------------------|-----|----|
| - Conduct an interview: | yes | no |
| - Make tape-recording:  | yes | no |
| - Make photo:           | yes | no |

I approve that representative of the above organisations present have access to documents of the proceedings

- |                            |     |    |
|----------------------------|-----|----|
| - make photocopies thereof | yes | no |
|----------------------------|-----|----|

My statements can be published:

- |   |     |    |
|---|-----|----|
| - Without identifying me in any manner: | yes | no |
| - With the initials of my name          | yes | no |
| - With my full name                     | yes | no |

I do confirm that I have been informed about the handling of my data and my related rights.

....., .....200

.....  
foreigner

.....  
monitor

.....  
Interpreter  
(name, ID card, signature)

**AD HOC AUTHORIZATION FOR INTERPRETERS**

The  
Regional Representation of the United Nations High Commissioner for Refugees  
for Hungary, Slovakia, Slovenia and Poland

Hereby authorizes

The Hungarian Helsinki Committee

To act on behalf of UNHCR and implement the Tripartite Memorandum of Understanding on Modalities of Mutual Co-operation and Coordination to Support the Access of Asylum-Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary concluded by the Border Guards of the Republic of Hungary, the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Slovakia, Slovenia and Poland and the Hungarian Helsinki Committee, and to contract an interpreter for individual occasions in the interest of implementing the above

Done at Budapest, this ..... day of .... 2006

.....  
UNHCR

The person designated by the Hungarian Helsinki Committee to implement this  
*ad hoc* authorization:

NAME:.....  
POB, DOB:.....  
ID card number:.....

This authorization is *valid from* ..... *to* .....  
Budapest, .....200..

.....  
HHC