

ASYLUM PROCESSES
(FAIR AND EFFICIENT ASYLUM PROCEDURES)

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I. INTRODUCTION

1. Many countries have amended existing asylum legislation and procedures in recent years. Formal procedures have also been introduced in a number of States which have recently acceded to international refugee instruments but had not yet established individual asylum systems. They include many central and eastern European States and a number of African and Latin American States. In the context of the European Union (EU), changes have been linked to moves to harmonize procedures within the EU.

2. Asylum procedures are guided by or built around responsibilities derived from international and regional refugee instruments, notably the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, international human rights law and humanitarian law, as well as relevant Executive Committee Conclusions.¹ National judicial and administrative law standards also determine the form and content of these procedures.

3. An examination of the purpose and content of asylum procedures, put in place by States to identify to whom asylum responsibilities are owed, is on the agenda of the Global Consultations process for several reasons. Firstly, State practice has evolved quite considerably since the Executive Committee last turned its attention to the form these procedures should take, and it is timely to examine recent trends with a view to identifying best practices which might be promoted. Secondly, there has been some debate in recent years about what constitutes "fairness" and "efficiency" in procedures, against the backdrop of mixed migratory movements, smuggling and trafficking of people and a degree of misuse of the asylum process for migration outcomes. States have legitimate concerns as regards procedures that are unwieldy, too costly, not necessarily able to respond effectively to misuse, and result in an unequal distribution of responsibilities. The role played by asylum procedures in the overall management of a broader migratory phenomenon is therefore of relevance to this examination.²

4. Finally, and most fundamentally, while the 1951 Convention defines those to whom it confers protection and establishes key principles such as non-penalization for illegal entry and *non-refoulement*,³ it does not set out procedures for the determination of refugee status as such, either for individual cases or in situations of large-scale influx. As such, analysis of this issue forms an important element of the third track of the Global Consultations, relating to issues not fully covered by the 1951 Convention.

5. Fair and efficient procedures are an essential element in the full and inclusive application of the Convention. They enable a State to identify those who should benefit from international protection under the Convention, and those who should not. States have acknowledged their importance by recognizing the need for all asylum-seekers to have access to them.⁴ The intention here is to identify the core elements necessary for fair and efficient decision-making in keeping with international refugee protection principles.

¹ Notably Conclusion No. 8 (XXVIII) 1977, on the determination of refugee status (A/AC.96/549, para. 53.6); Conclusion No. 30 (XXXIV) 1983 (A/AC.96/631, para. 97.2), on the problem of manifestly unfounded or abusive applications for refugee status or asylum.

² See also EC/GC/01/XII on Refugee protection and migration control; EC/50/SC/CRP.17 on Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach, presented to the 18th meeting of the Standing Committee.

³ 1951 Convention relating to the Status of Refugees, Articles 1, 31 and 33.

⁴ See, Conclusion No. 81 (XLVIII) 1997, para. (h) (A/AC.96/895, para. 18); Conclusion No. 82 (XLVIII) 1997 para.(d)(iii) (A/AC.96/895, para.19); Conclusion No. 85 (XLIX), 1998, para. (q) (A/AC.96/911, para. 21.3). In mass influx situations, access to individual procedures may not, however, prove practicable.

6. This background note outlines recent developments in State practice, selecting key measures introduced by States to speed up decision-making. These range from admissibility procedures, including those at the border, to accelerated procedures, in particular for claims deemed manifestly unfounded or abusive. While by no means exhaustive, this note seeks to establish a common understanding of and structure for asylum procedures and to identify core procedural standards necessary to preserve the integrity of the asylum regime as both fair and efficient.

II. SHARING RESPONSIBILITIES MORE EQUITABLY

7. A number of States have now introduced an admissibility stage to their asylum procedures to determine whether a claim will or will not be considered in substance in the country where it has been made. This does not involve a substantive assessment of the claim, but seeks to determine the State responsible for doing so.

8. An asylum-seeker may be refused access to the substantive asylum procedure in the country where the application has been made:

- if the applicant has already found effective protection in another country (a first country of asylum), or
- if responsibility for assessing the particular asylum application in substance is assumed by a third country, where the asylum-seeker will be protected from *refoulement* and will be able to seek and enjoy asylum in accordance with accepted international standards (a “safe third country”).

9. Both concepts were partly born of a concern to limit irregular secondary movement. As the following sections show, it is useful to maintain a clear distinction between the two.

A. First country of asylum

10. The majority of States deny a person access to asylum on their territory if s/he has already found protection in another country. In principle, this should not pose difficulties, assuming the surrogate protection required by the individual is available and can be accessed. Where the notion has, however, been problematic in practice has been in the judgement required as to whether protection possibilities are both genuinely “available”, i.e. accessible to the individual concerned, and “effective”.

11. Admissibility procedures which provide for an individual assessment of each case are clearly best practice here. It may, for example, be that although an individual previously enjoyed protection in another country, s/he can justifiably claim to have a reason to fear that his/her physical safety and/or freedom are endangered in that country.⁵ It may also be that a refugee cannot secure effective protection and the full and durable enjoyment of his/her rights in a first country of asylum, for instance, if s/he is obliged to live without proper legal status. In such cases, refugees may legitimately feel compelled to seek protection elsewhere.

B. The “safe third country” concept

12. The “safe third country” notion presumes that the applicant could and should already have requested asylum if he/she passed through a safe country *en route* to the country where asylum is being requested. This notion is applied in most European States, although it is less widely used

⁵ Conclusion No. 15 (XXX) 1979, para. (k) (A/AC.96/572, para.72.2); and Conclusion No. 58 (XL) 1989, para. (g) (A/AC.96/737, para. 25).

elsewhere. It is applied in various ways: to deny admission to the procedure (including directly at the border), to channel applications into accelerated procedures, and/or to reduce or exclude appeal rights. Several States have publicly available "safe third country" lists, while others apply the notion in a more informal manner.

13. Procedures that qualify as best practice are those which provide for an individualized assessment that the third country is "safe" in the case of each asylum-seeker thus ensuring respect for international protection principles and in particular that of *non-refoulement*. Such best practice procedures include an examination of the individual's own circumstances so as to give the asylum-seeker the opportunity to rebut a general presumption of safety. S/he could, for instance, demonstrate that on the facts of his/her case, the third State would apply more restrictive criteria in determining his/her status than the State where the application has been presented.⁶

14. As for the general question of "safety", this cannot be answered solely on the basis of formal criteria, such as whether or not the third State is a party to the 1951 Convention and 1967 Protocol and/or relevant international human rights treaties. The third State needs actually to implement appropriate asylum procedures and systems fairly. Any list-based general assessment of safety of the third country needs to be applied flexibly, and ensure due consideration of that country's safety for the individual asylum-seeker.

15. In accordance with recommended best State practice, procedures in such cases should explicitly provide for return to be effected only if the individual will be readmitted to the country, will be able to access fair asylum procedures and, if recognized, will be able to enjoy effective protection there.⁷ In terms of formal safeguards, it is important for the returning State to provide clear information (in the language of the third State and one understood by the applicant) that the individual is an asylum-seeker and that his/her application has not been substantively examined.

16. Provision is made in certain systems for States to admit and consider the claim in substance, rather than seeking to transfer responsibility for doing so. This is appropriate if an asylum-seeker has passed through a "safe third country" but has close family and/or significant other ties with the country where asylum is claimed, or if there are compelling humanitarian reasons (e.g. health). It is also appropriate if the asylum-seeker was merely in transit for a limited period of time in an intermediate country where s/he has no links or contacts, for the sole purpose of reaching his/her destination.

17. EU States sought to address some of these issues more predictably through the conclusion of the 1990 Dublin Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities. This Convention establishes mechanisms to determine the State responsible for assessing the claim and for mutually-agreed transfer, although States may also return asylum-seekers to a non-EU State. In practice, there have been problems with its implementation, which has often been slow and resulted in the transfer of only a small proportion of cases.⁸ The Dublin Convention is being reformed in tandem with the move towards greater harmonization of EU State practice in asylum

⁶ See, *inter alia*, European Court of Human Rights, admissibility decision in *T.I. v. United Kingdom*, 7 March 2000.

⁷ See Note on International Protection, presented to the Executive Committee's fiftieth session, (A/AC.96/914, para. 19).

See also Recommendation No. R(97)22 of the Committee of Ministers of the Council of Europe containing Guidelines on the Application of the Safe Third Country Concept (25 Nov.1997).

⁸ See working paper of the Commission of the European Communities, "Revisiting the Dublin Convention: Developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States", SEC (2000) 522 final, 21 March 2000.

matters, including the interpretation of the refugee definition. The Dublin Convention has nevertheless provided a more predictable cooperative framework in which asylum-seekers can be transferred with the agreement of both States concerned, and with an acceptance that the claim will be examined in substance.

18. In the wider context, consideration could be given to the possibility of concluding other multilateral or bilateral Dublin-type agreements to ensure that the “safe third country” notion is applied with clear safeguards as an integral part of its application. Such agreements would serve to enhance predictability, and address concerns regarding unilateral returns. It would be in the interests of States parties not to return asylum-seekers to other States except under such mutually agreed arrangements. Another important element to consider when crafting this type of agreement is the question of the criteria applicable for determining the State responsible for examining each case to ensure that the operation of any transfer mechanism is timely and equitable, in line with a burden-sharing rationale. Ultimately, the effective operation of such mechanisms is dependent upon closer harmonization among States parties in the actual application of asylum policies and procedures, as well as on equitable burden and responsibility-sharing mechanisms.

C. Imposition of time limits for applications

19. Another issue affecting admission to asylum procedures concerns the time limits within which asylum applications must be made which are applied by some States. These can range from 24 hours to one year. Moreover, some States restrict or deny access to social assistance based on the time or place the application is made.

20. A fundamental safeguard in some systems, which should, in UNHCR’s view, be promoted for all, is the recognition that an asylum-seeker’s failure to submit a request within a certain time limit or the non-fulfilment of other formal requirements should not in itself lead to an asylum request being excluded from consideration, although under certain circumstances a late application can affect its credibility. The automatic and mechanical application of time limits for submitting applications has been found to be at variance with international protection principles.⁹

III. RECEIVING ASYLUM-SEEKERS AT THE BORDER

21. Applications for asylum made at the border, including at airports, raise particular questions, since the asylum-seeker is generally held at the border and only given access to the territory if admitted to the full asylum procedure. In these situations, States are understandably concerned to ensure that cases not in need of international protection are dealt with without delay, and returns effected promptly where appropriate. Concerns arise, however, when for example, guards at land borders may have broadly defined powers that include assessment of the substance of the claim, but may have limited expertise in asylum matters. At airports, many States have introduced special accelerated procedures. Sometimes these include specific safeguards and support, given the particular situation of the asylum-seeker who is generally required to remain at the airport while a decision is made. Sometimes, however, such measures are not in place and those in need of international protection may be unable to gain access to procedures or even advice.

22. Since decisions at the border/airport involve substantive issues and are sometimes made within very tight time frames, the possibility of an inaccurate decision can be higher. It is therefore essential that appropriate safeguards are in place, at a minimum those included in other accelerated procedures “on shore”. In particular, where decision-making deadlines cannot be met, whether for

⁹ *Jabari v. Turkey*, European Court of Human Rights, 10 July 2000, para. 40; see also Conclusion No. 15 (XXX), 1979, on refugees without an asylum country, para. (i) (A/AC.96/572, para. 72.2).

administrative or substantive reasons, the asylum-seeker should logically be admitted to the regular procedure. Access to legal advice, to UNHCR and to non-governmental organizations (NGOs) working on behalf of UNHCR is also critical both at the border and in an airport transit zone. At land borders, if the situation of someone seeking entry raises issues relating to asylum, the case should be referred to the central authority responsible for asylum so that it can interview the applicant and make a decision on entry and on the claim. In some States, these basic safeguards are indeed built into the procedure. They are recommended for inclusion more broadly.

23. An additional recommended practice that has proved particularly valuable for border officials and others working with asylum-seekers is that of training, including in appropriate interviewing skills and relevant refugee protection principles. Officials also need to be aware of the particular protection needs of groups with special needs, such as torture victims, women, children notably those separated from their family, and the elderly (see section V below).

IV. EXPEDITING AND STREAMLINING EQUITABLE PROCEDURES

24. In recent years, asylum procedures in many countries have become increasingly complex. In addition to the inclusion of an admissibility stage, accelerated or shortened procedures have been introduced for certain categories of asylum claims and/or separate procedures to assess complementary protection needs.¹⁰ These changes have often been prompted by an increased number of arrivals and a growing backlog of asylum decisions, as well as by attempts to ensure a fairer assessment of claims. Several of these tools are outlined below, although in many cases a simplified, single procedure may prove fairer and more efficient.

A. Procedures for manifestly unfounded or abusive claims

25. Many States have introduced accelerated procedures to determine applications which are clearly abusive or manifestly unfounded and can otherwise overburden asylum procedures to the detriment of those with good grounds for requesting asylum, as acknowledged in Executive Committee Conclusion No. 30. The situation is complicated by the fact that some States have introduced the “manifestly unfounded” notion at other stages of the procedure, including at the admissibility stage.

26. There is a need, in UNHCR’s assessment, to promote a more common understanding of the types of claim which would merit the presumption that they are manifestly unfounded or clearly abusive, and which could be examined under an accelerated procedure. (The latter, unlike an admissibility procedure, deals with the substantive claim, albeit in a simplified and shortened manner.) If the types of application which may be categorized as clearly abusive or manifestly unfounded can be clearly defined and delimited and if appropriate safeguards are in place, the approach can be a useful case management tool within the asylum procedure to expedite decision-making in countries dealing with a significant caseload. This being said, the experience of some States demonstrates that, where relatively few applications are generally received, a focus on prompt quality decision-making under a single procedure is likely to be a more effective option (see section VI below).

27. Conclusion No. 30 describes “clearly abusive” and “manifestly unfounded” applications as “those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 ... Convention ... nor to any other criteria justifying the granting of asylum”.

¹⁰ See EC/50/SC/CRP.18, “Note on Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime”, presented to the 18th meeting of the Standing Committee.

28. Whether a case is deemed “manifestly unfounded” or not will depend upon the degree of linkage between the stated reasons for departure and the refugee definition. One potential problem in applying this notion is that not all asylum-seekers have the capacity without assistance to articulate clearly and comprehensively why they left, and certainly not where there is an element of fear or distrust involved, or where other factors are at play, including the quality of the interpreters. There is also the issue of credibility: an asylum-seeker’s description of events prompting flight may appear to relate to the refugee definition, but may still lack objective credibility, while falling short of being “fraudulent”. Some States have factored credibility, or absence thereof, into the original assessment of manifest unfoundedness.

29. Among the categories of claim often deemed manifestly unfounded are those from so-called safe countries of origin, as outlined further in section C below. In recent years, a number of States have recognized, however, that certain types of cases should not be dismissed as “manifestly unfounded” either at the admissibility stage or in accelerated procedures, if such procedures are to be implemented fairly. For instance, there is now wider recognition that applications involving questions of an internal flight/relocation alternative and exclusion clauses under Article 1(F) of the 1951 Convention can give rise to complex issues of substance and credibility which are not given appropriate consideration under admissibility or accelerated procedures.¹¹

30. The category of abusive or fraudulent claims involves those made by individuals who clearly do not need international protection, as well as claims involving deception or intent to mislead which generally denote bad faith on the part of the applicant. It is accepted that such claims may be subjected to accelerated procedures. They give rise to a presumption of unfoundedness and expedited procedures can be put in place to test that assumption. Though curtailed, an individual assessment of the motivation for flight is essential to support or rebut this presumption. If major substantive issues arise, best State practice transfers the claim to the regular procedure.

31. Similarly, a number of States have taken the position that repeated applications in the same jurisdiction should be considered abusive and subjected to accelerated procedures. Where such cases have been properly adjudicated in that jurisdiction, a simple administrative decision not to entertain the application rather than its reconsideration could be sufficient, in keeping with the *res judicata* principle. In such cases, however, States which provide for an individual assessment of the applicant’s specific circumstances are putting in place a process to be replicated elsewhere. Such best practice involves an assessment that it is indeed a repeated application in which there are no significant substantive changes to the asylum-seeker’s individual situation or to the circumstances in the country of origin. The situation is similar if an individual applies for asylum when s/he faces deportation or expulsion and his/her claim has been properly assessed and adjudicated. Where an individual faces deportation or expulsion for another reason and applies for asylum for the first time, then the application needs to be assessed under either the regular or accelerated procedure depending on the nature of the claim, since his/her earlier status may have provided *de facto* protection.

32. Where accelerated procedures are applied, it is important that appropriate procedural safeguards are in place. In addition to the basic requirements applying to all types of asylum application¹², three particular safeguards have been identified that are specifically applicable to accelerated procedures¹³. First, the applicant should be given a complete personal interview by a fully qualified official, whenever possible, by an official of the authority competent to determine

¹¹ See, for example, Commission of the European Communities, “Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status”, COM(2000) 578 final, 20 Sept. 2000.

¹² Conclusion No. 8 (XXVIII) 1977, (A/AC.96/549, para. 53).

¹³ Conclusion No. 30 (XXXIV) 1983, (A/AC.96/631 para. 97.2).

refugee status. Second, the authority normally competent to determine refugee status should establish the manifestly unfounded or abusive character of an application. Third, an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory. This review possibility can be more simplified than that available in the case of rejected applications not considered manifestly unfounded or abusive.

33. In a few States, an accelerated procedure is used for cases where a positive decision is expected. This is a useful practice which helps reduce the burden on decision-making structures and frees up resources to deal with more complex cases.

B. Undocumented and uncooperative asylum-seekers

34. Many States have faced a growing problem of asylum-seekers who arrive with no or forged documents and/or who are unwilling to cooperate with the authorities. They present particular problems and can overload asylum procedures. A number of States tend to presume such asylum applications are abusive and often subject them to expedited removal or other separate accelerated processing. They have also applied a range of sanctions, including civil or criminal prosecution, fines, detention, more frequent reporting requirements to the authorities, the withdrawal or reduction of financial benefits or their replacement by goods in kind, and the denial of work authorization.

35. As States have long recognized, however, it is likely that refugees may need to resort to illegal means to flee, which should not result in them being subject to penalties, where they meet the process requirements of Article 31(1) of the 1951 Convention. A lack of appropriate documentation or the use of false documents does not alone render a claim abusive or fraudulent and should not be used to deny access to a procedure, since any presumption of abuse needs to be examined to determine its validity.¹⁴

36. The concern is to differentiate between these cases and those where the applicant has wilfully destroyed or disposed of travel or other documents for reasons materially unrelated to the substance of an asylum claim, in order to make examination of the application or expulsion more difficult. It may, however, be that an initial lack of cooperation results from communication difficulties, disorientation, distress, exhaustion, and/or fear. Credibility may be an issue. For example, continued insistence that documents are genuine, once they have been proven false clearly undermines the credibility of a claim. A refusal to provide details of the route taken to flee also undermines credibility, although this could also be because the asylum-seeker fears *refoulement*, because s/he does not wish to endanger the lives of others, or because the route taken by smugglers is not known. Those who refuse to cooperate in establishing their identity and/or refuse to provide information concerning their claim despite repeated requests to do so seriously undermine their own credibility.

37. Awareness and sensitivity are necessary to recognize these different factors. Appropriate counselling of the asylum-seeker on the meaning and nature of the asylum procedure, on his/her rights and responsibilities, and on the consequences of not cooperating have proved helpful in promoting cooperation. Access to UNHCR, relevant NGOs, and legal advice can also play an important role in giving the asylum-seeker greater confidence in and understanding of the procedure. The better procedures are those into which these factors are built. For his/her part, the asylum-seeker has an obligation to give a full and truthful presentation of his/her case and to

¹⁴ See Note on International Protection, (A/AC.96/914, para. 23). See also, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, para.196.

cooperate with the authorities.¹⁵ The procedures should also be structured to promote this obligation being met.

C. Safe countries of origin

38. The safe country of origin concept has been used in certain asylum procedures either on a formal legislative or on a *de facto* basis. Some States have drawn up extensive lists of such countries, sometimes applying them as an automatic bar to access to the asylum procedure. The concept has also been used as a procedural tool to assign certain applications to accelerated procedures, or it has been given an evidentiary function, for example to create a presumption that the claim is not valid. Some States curtail appeal rights for asylum-seekers from countries of origin deemed to be safe.

39. Experience shows that, while this concept can work as an effective decision-making tool, it is important that the general assessment of certain countries of origin as safe is based on reliable, objective and up-to-date information from a range of sources. It needs to take account not simply of international instruments ratified and relevant legislation enacted there, but also of the actual degree of respect for human rights and the rule of law of the country's record of not producing refugees, of its compliance with human rights instruments, and of its accessibility to independent national or international organizations for the purpose of verifying human rights issues. If a State decides to establish a list of safe countries of origin, the procedure for adding or removing countries from any such list needs to be transparent, as well as responsive to changing circumstances in countries of origin. In addition, given the need for an individual assessment of the specific circumstances of the case and the complexities of such a decision, best State practice does not apply any designation of safety in a rigid manner or use it to deny access to procedures. Rather, it bases any presumption of safety on precise, impartial and up-to-date information and admits the applicant to the regular asylum procedure, so that s/he has an effective opportunity to rebut any general presumption of safety based on his/her particular circumstances.

40. It has been suggested that a regional or international approach to examining asylum applications could be developed which would integrate the safe country of origin concept, and allow claims to be considered under a greatly accelerated process if they emanate from persons leaving listed countries. Such a proposal could certainly be studied. It would need, however, to address the question of the appropriate criteria used to determine safety and the transparency of the procedure to do so. In addition, the 1951 Convention could not be read in any way as condoning rejection of refugee status because of national or ethnic origin. In fact, it must be recalled that the Convention envisages the positive conferral of status because of well-founded fear of persecution for reasons of race or nationality. In order for the non-discriminatory basis of the 1951 Convention to be upheld, it is crucial that the asylum-seeker be admitted to the asylum procedure and has an effective opportunity to rebut a general presumption of safety in his/her individual case. Consideration of such a mechanism would, moreover, need to take account of the fact that generic listing of countries has not proved responsive enough to the genuine protection problems in individual cases, and potentially has political complications.

D. Appeals

41. Procedures in place in most States recognize that standards of due process require an appeal or review mechanism to ensure the fair functioning of asylum procedures, although the nature of the appeal or review can vary quite widely depending on administrative law standards applicable in the country. Under regular decision-making procedures, State practice generally permits an appeal or review which involves considerations of both fact and law. In addition, most

¹⁵ UNHCR *Handbook*, para.205.

jurisdictions permit a further judicial review, which addresses questions of law only, and may be limited by a leave requirement.

42. Where capacity is lacking or cases are assessed under an accelerated procedure, State practice has tended to be for the appeal process to take the form of an administrative review of a more simplified nature. For example, some States prioritize certain cases for appeal, reduce the number of members of a panel hearing the appeal, shorten time limits for lodging an appeal, or restrict review of certain types of cases to a review of documentation alone. In some countries, admissibility procedures offer no right of appeal against rejection on “safe third country” grounds, or such an appeal has no suspensive effect on the implementation of deportation. In cases considered under accelerated procedures, several countries only grant a right to apply for authorization to remain in the territory or at the border while the appeal is considered.

43. A key procedural safeguard deriving from general administrative law and essential to the concept of effective remedy, has become that the appeal be considered by an authority different from and independent of that making the initial decision. Other safeguards of particular importance for expedited appeals for which a time limit has been imposed within which appeals must be made, include measures to ensure that an asylum-seeker has prompt access to legal advice, interpreters and information about procedures, so that s/he still has access to an effective remedy. The possibility for the appeal or review authority to gain a personal impression of the applicant is another important safeguard. An interview is less essential if the application is presumed manifestly unfounded or clearly abusive, and a face-to-face interview by a fully qualified official has already taken place. Another broadly recognized essential safeguard for an appeal, whether made at the admissibility stage, in an accelerated or regular procedure, is that it should in principle have suspensive effect until a final decision on the appeal has been made.

V. ENHANCING AWARENESS OF SPECIAL PROTECTION NEEDS

44. Certain vulnerable asylum-seekers require particular attention, understanding and sensitivity, especially if accelerated or otherwise curtailed procedures are introduced. They include torture victims, victims of sexual violence, women under certain circumstances, children particularly unaccompanied or separated children, the elderly, psychologically disturbed persons, and stateless persons. Some States have developed specific procedures and guidelines for such groups. These could usefully be replicated elsewhere.

45. As regards female asylum-seekers, it is important that if accompanied by male relatives they are informed in private and in terms they understand of their right to make an independent asylum application at any stage, and that they are afforded the opportunity to seek legal advice before making such an application. Female asylum-seekers should in preference be given the opportunity to be interviewed by skilled female interviewers and interpreters, and should in any case be interviewed in a gender-sensitive environment. Where a principal applicant is granted protection, other members of the family should, in the interests of family unity, be given the same status.¹⁶ Where a principal applicant is excluded from status, family members should have their claims independently adjudicated in their own right.

46. Best practices as regards unaccompanied or separated children are built around the following principles. The best interests of the child are paramount. The child should not be refused entry or returned at the point of entry, or be subjected to detailed interviews by immigration authorities at the point of entry. As soon as a separated child is identified, a suitably qualified

¹⁶ Conclusion No. 64 (XLI) 1990, para. (a)(iii) (A/AC.96/760, para. 23 (a) (iii); Conclusion No. 88 (L) 1999, para. b(iii) (A/AC.96/928, para. 21).

guardian or adviser should be appointed to assist him/her at all stages. Interviews should be carried out by specially trained personnel and separated children should not be detained for immigration reasons.¹⁷

47. Targeted training can clearly enhance officials' sensitivity towards and awareness of legal and procedural issues as they relate to each of these groups and their particular needs. Similar guidelines and training are relevant to the other categories mentioned above.

VI. PROMOTING A SINGLE ASYLUM PROCEDURE

48. In many cases, a single, consolidated procedure which assesses whether an asylum-seeker qualifies for refugee status or other complementary protection represents the clearest and swiftest means of identifying those in need of international protection. It could offer a more economical and less fragmented approach, which would ultimately lend itself more readily to the establishment of a more coherent interpretation of international protection needs. The key to a credible asylum system that protects refugees and discourages people who do not have a legitimate asylum claim is quality decision-making, done promptly, and with the results enforced, including the return of those not in need of international protection.

VII. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

49. Initiatives by States to enhance the operation of the asylum system have tended in recent years to spawn an increasingly wide variety of procedures and processes. The challenge now is to refocus efforts to establish clearer and simpler procedures, which concentrate on well-resourced, quality initial decision-making with appropriate safeguards. Asylum procedures managed more expeditiously, efficiently and fairly in keeping with international refugee law standards will make an important contribution to improving the capacity of States to manage arrivals of non-nationals.

50. In order to pursue this goal, it is therefore proposed that national legislation on asylum procedures be introduced, where this does not exist. It would also be useful, in UNHCR's assessment, for the Executive Committee to reach agreement on some basic guiding principles, possibly in the form of a Conclusion on Asylum Procedures. This should build on existing Conclusions based on best State practices and should aim to offer a consolidated framework within which asylum procedures can be developed that are compatible with national systems and in keeping with international refugee protection standards. The following compilation of best practice could provide a useful basis:

- a) All asylum-seekers, in whatever manner they arrive within the jurisdiction of a State, should have access to procedures to adjudicate their claim which are fair, non-discriminatory and appropriate to the nature of the claim.
- b) Countries of asylum which apply admissibility procedures may return refugees to a first country of asylum, where it has first been ascertained that the person will be accepted upon return and will continue to enjoy effective protection in that country.

¹⁷ See, for instance, Immigration and Refugee Board of Canada, "Child Refugee Claimants: Procedural and Evidentiary Issues", 30 Sept. 1996; UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, Feb. 1997; Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, European Union, Official Journal C 221, 19 July 1997, pp. 23-7; Save the Children Alliance in Europe/UNHCR, "Separated Children in Europe Programme: Statement of Good Practice", October 2000.

- c) An asylum-seeker should only be returned to a third State, if responsibility for assessing the particular asylum application in substance is assumed by the third country, if the asylum-seeker will be protected from *refoulement* and will be able to seek and, if recognized, enjoy asylum in accordance with accepted international standards. Any mechanisms under which responsibility for assessing the asylum claim is transferred should be clearly defined in law.
- d) Accelerated procedures when employed to resolve manifestly well-founded cases can be a useful case-management tool to enhance prompt decision-making. They may also be useful where abuse or unfoundedness is manifest. The parameters for these latter cases need to be clearly defined so that decisions involving complex substantive issues are not included. Procedures need to incorporate appropriate safeguards, in particular to allow for an individual assessment of the situation where circumstances may have changed.
- e) A single procedure to assess the claims of all those seeking refugee status or other complementary protection may, in many cases, represent the clearest and swiftest means of identifying those in need of international protection. Particularly in countries where there are relatively few asylum claims, a single, prompt and efficient core decision-making procedure is likely to be the most efficient and most appropriate approach.
- f) The safe country of origin concept may prove to have merit as a case-management tool within the asylum procedure, for instance, to assign applications to a fast track or to decision-making teams with particular geographical expertise. It could also have an evidentiary function, for instance, giving rise to a presumption of non-validity. There needs, however, to be provision for an assessment of the individual circumstances of each case and an opportunity to rebut a presumption of safety. Any general assessment of safety of a specific country needs to be made in an impartial and transparent manner against precisely articulated and widely endorsed criteria.
- g) At all stages of the procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel. Where free legal aid is available, asylum-seekers should have access to it in case of need. They should also have access to qualified and impartial interpreters where necessary, and the right to contact UNHCR and recognized NGOs working in cooperation with UNHCR. UNHCR's mandate requires that it have prompt and unhindered access to asylum-seekers and refugees wherever they are.
- h) The examination of applications for refugee status should in the first instance allow for a personal interview, if possible before the decision-makers of the competent body, and should be based on a thorough assessment of the circumstances of each case. The asylum-seeker should have the opportunity to present evidence concerning his/her personal circumstances and conditions in the country of origin. In manifestly well-founded cases, an interview may not always be necessary where a positive decision is expected.
- i) The body responsible for examining and deciding on applications for refugee status in the first instance should be a single, central specialized authority. If an initial interview is made by a border official, there should be provision that an applicant not be rejected or denied admission without reference to a central authority.
- j) Decision-makers should have access to accurate, impartial, and up-to-date country of origin information from a variety of sources as a key decision-making tool. They should be trained in appropriate, cross-cultural interviewing skills, be familiar with the use of interpreters, and have requisite knowledge of refugee and asylum matters.

- k) The asylum-seeker has a responsibility to cooperate with the authorities in the country of asylum. The burden of proof is shared between the individual and the State in acknowledgement of the vulnerable situation of the asylum-seeker. The procedures should reflect both of these factors.
- l) A lack of appropriate documentation or the use of false documents should not in itself render a claim abusive or fraudulent. Where the asylum-seeker has wilfully destroyed identity documents and refuses to cooperate with the authorities, this can undermine the credibility of his/her claim and lead to the channelling of the claim into an appropriate expedited procedure.
- m) The asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request. No information on the asylum application should be shared with the country of origin.
- n) There should be special procedures and training to enable the sensitive and flexible handling of claims involving asylum-seekers with special needs, including victims of torture or sexual violence. In relation to women and children, such procedures should, for instance, take into account the following considerations:
- Where female asylum-seekers are accompanied by male relatives they should be informed in private and in terms they understand of their right to make an independent individual asylum application at any stage and be afforded the opportunity to seek legal advice before making such an application. Female asylum-seekers should preferably be given the opportunity to be interviewed by skilled female interviewers and interpreters and should in any case be interviewed in a gender-sensitive environment.
 - For unaccompanied or separated children, the best interests of the child are paramount. They should never be refused entry or returned at the point of entry or subjected to detailed interviews by immigration authorities at the point of entry. As soon as a separated child is identified, a suitably qualified guardian or adviser should be appointed to assist them at all stages. Interviews should be carried out by specially trained personnel and separated children should never be detained for immigration reasons.
- o) All applicants should receive a written decision automatically, whether on admissibility or the claim itself. If the claim is rejected or declared inadmissible, the decision should be a reasoned one.
- p) All applicants should have the right to an independent appeal or review against a negative decision, including a negative admissibility decision, although this may be more simplified in the case of admissibility decisions or decisions made under accelerated procedures. The letter of rejection should contain information on the asylum-seeker's right to appeal, provisions of the appeal procedure and any applicable time limits. An asylum-seeker should in principle have the right to remain on the territory of the asylum country and should not be removed, excluded or deported until a final decision has been made on the case or on the responsibility for assessing the case.