

**ECRE**

EUROPEAN COUNCIL  
ON REFUGEES AND EXILES

CONSEIL EUROPEEN  
SUR LES REFUGIES  
ET LES EXILES

**ECRE GUIDELINES**  
**ON FAIR AND EFFICIENT PROCEDURES**  
**FOR DETERMINING REFUGEE STATUS**

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**September 1999**

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## EXECUTIVE SUMMARY

In this paper, the European Council on Refugees and Exiles (ECRE) has compiled the views of its member agencies consisting of 67 refugee-assisting non-governmental organisations throughout Europe.

The paper starts from the position that asylum is a matter of fundamental human rights. The legal and procedural standards required for the treatment of persons seeking asylum in Europe derive from fundamental respect for the dignity of the individual and from the legal obligations undertaken by governments by virtue of their accession to the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees and other relevant international human rights instruments. However, in the absence of specific procedural requirements for the refugee determination process in the 1951 Convention, European States have developed differing procedures and standards.

ECRE notes that due to an overall increase in the number of persons applying for asylum in Europe during the last decade of this century, European asylum procedures were put under heavy pressure. However, it finds it regrettable that European States' response focussed on restrictive and deterrent measures some of which threaten to undermine the basic principles of refugee protection. Consequently, ECRE welcomes the opportunity which the Amsterdam Treaty now presents to European Union Member States to reverse some of the restrictive practices which have characterised asylum procedures over the last decade.

ECRE is of the opinion that asylum procedures will be both fairer and more efficient if protection remains their central focus. ECRE maintains that an effective asylum procedure depends on good quality initial decision-making. Better initial decisions will clarify whether or not there are grounds to appeal and, if so, refine the issues to be dealt with at appeal, reducing the length and expense of the system as a whole.

An efficient asylum procedure can only be attained if supported by institutional capacity, good quality independent and accurate information and continuous training. With the allocation of sufficient resources, speedier decisions could be achieved without compromising procedural fairness. Measures should also be taken to facilitate speedier decisions on obviously well-founded applications for asylum. It is clearly in the interests of both refugees and national authorities that such decisions are made as quickly as possible.

In principle, ECRE considers that the most efficient way of approaching asylum determination is for states to have in place a single national asylum procedure, applicable to all asylum applications regardless of where the application is made or where the procedure is conducted. Experience has shown that the introduction of a variety of asylum procedures for different categories of asylum applications with the hope of shortening procedures often leads to procedural and legal jungles rather than to efficiency. ECRE is opposed to the use of admissibility and accelerated procedures that compromise necessary legal and procedural safeguards for the protection of refugees. ECRE proposes that where states persist in retaining such procedures, their scope should be radically reduced and minimum legal and procedural safeguards should be assured.

ECRE puts forward a range of recommendations on access to asylum procedures, admissibility procedures, the determination of state responsibility, the asylum procedure, appeals, the implementation of asylum procedures, including training of officials, legal representation, data protection, information and transparency, and the suspension of asylum procedures. These guidelines aim to set the standard for the reassessment of national asylum procedures.

## KEY RECOMMENDATIONS

### *General requirements*

1. The asylum procedure must be able to identify and grant an appropriate status to all persons in need of protection. This includes not only asylum seekers who may be refugees as defined by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, but also asylum seekers who may be in need of international protection but who fall outside a correct interpretation of the terms of the 1951 Convention. This may concern a case covered by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the UN Convention against Torture, Article 7 of the International Covenant on Civil and Political Rights or by a more broadly defined complementary form of protection.
2. All requests for asylum, as well as all cases in which there is any indication that an asylum request might be involved, should be examined and decided upon by qualified personnel of a specialised central authority competent to take decisions in the field of asylum and refugee matters. This includes any decision:
  - (a) to return an asylum applicant to the country of origin;
  - (b) to return an asylum applicant to a third State;
  - (c) to determine state responsibility under the Dublin Convention;
  - (d) to apply the exclusion clauses of the 1951 Geneva Convention; and
  - (e) any decision on the merits of the application including the determination of refugee status and the need for protection in the first instance.
3. An asylum request should not be excluded from the asylum procedure for non-fulfilment of formal requirements. No specific wording or formulation should be required to request asylum and there should be no deadline within which an asylum request must be made. Asylum seekers should not be required to possess any specific identity or travel document. Under no circumstances should asylum seekers be directed to the embassy or consulate of their country of origin in order to obtain such documentation.
4. Each applicant for asylum should immediately be informed upon requesting asylum, of the right to qualified independent legal advice and representation, and how to exercise it without delay. This includes, where the financial situation of the asylum seeker requires, the provision of free legal assistance by the host state. Legal assistance should be available throughout the procedure.
5. Asylum seekers should be informed promptly and fully of the asylum procedure, including an explanation of their rights and duties and how to exercise them, at the earliest possible stage, prior to the first substantive interview. As a minimum, information should always be provided in writing in the host state's language, and orally in a language which the asylum seeker fully understands.
6. Unless the asylum seeker speaks fluently a language fully understood by the interviewing officer and the legal representative, a competent, professionally qualified, trained and

impartial interpreter, who is guided by a code of conduct, should be made available. This requirement applies to all phases of the procedure.

7. ECRE believes that, within the normal asylum procedure, speedier decisions should and can be taken on applications that clearly meet the criteria for recognition of refugee status set out in the 1951 Convention and its 1967 Protocol.
8. All applications for asylum should be guaranteed an individual, impartial and substantive examination of all circumstances. In circumstances where a whole group of persons is exposed to persecution, the individual examination may be limited to determining whether the individual belongs to the group in question.
9. Every asylum seeker should be given a fair and complete interview by the competent authorities. Asylum seekers should never be interviewed by police or border guards on the substance of their asylum claim. The right to an interview may be waived where the competent authority considers it possible to grant protection solely on the basis of documentation submitted.
10. It is the duty of the competent authority to assist the applicant to substantiate the claim to refugee status by drawing his/her attention to the importance of providing all available evidence and by obtaining documentation from a variety of sources, including non-governmental, in support of the application.
11. Recognition of refugee status does not require asylum applicants to prove every fact alleged in the claim to refugee status or to produce formal evidence. A lack of corroboratory evidence is not sufficient ground to reject the application. It is sufficient for them to show that their fear of persecution is a reasonable one. If this standard of proof is satisfied, they should be recognised as refugees. Asylum applicants should be given the benefit of the doubt where a credible account of their fear of persecution is provided and once all available evidence has been obtained and checked.
12. Any decision on an asylum application should be communicated to the applicant in writing in a language s/he understands and to his/her legal advisor. If the written decision can only be provided in the language of the host country, then it should additionally be communicated orally to the asylum applicant in a language s/he fully understands.
13. A negative decision should clearly and fully state the specific reasons for the rejection of that application, the evidence which was relied on, as well as provide information on the asylum seeker's right to appeal against it, any applicable time limits and the provisions of the appeal procedure.
14. In the case of any decision not to grant refugee status according to the 1951 Geneva Convention, or any decision not to grant a complementary form of protection, or any decision relating to the determination of state responsibility, the applicant should have the right and the means to appeal, whilst remaining in the country, both on the merits of the application and the legality of the decision, to a judicial or other independent appellate body.

## *Admissibility procedures*

15. ECRE is opposed to the use of admissibility procedures where they compromise necessary legal and procedural safeguards for the protection of refugees.
16. Where states operate an admissibility procedure, it should precede the substantive examination of the asylum application. Neither the well-foundedness of an asylum claim nor the applicability of the exclusion clauses or the concept of internal relocation<sup>1</sup> should be assessed in admissibility procedures as this involves a complex examination of the merits of the case. Its purpose should be solely to determine:
  - (a) if the applicant has already found protection in another state (first country of asylum); or
  - (b) if the asylum application should be examined by a third state under the Dublin Convention or on third country grounds.
17. As a minimum, guarantees concerning access to free legal advice, an interpreter, UNHCR/non-governmental organisations and a suspensive right of appeal must apply without exception. Where the admissibility procedure is conducted at the border, time limits should be established and all legal and procedural guarantees should apply.
18. No asylum applicant should be returned to a third country, including States party to the Dublin Convention, before determining that all the following requirements are fulfilled:
  - (a) the applicant's life or freedom will not be threatened in the third state, within the meaning of Article 33 of the 1951 Convention;
  - (b) the applicant will not be exposed to torture, inhuman or degrading treatment by the third state, within the meaning of Article 3 of the European Convention on Human Rights, Article 3 of the UN Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights;
  - (c) the third state is a party to and implements the 1951 Convention and its 1967 Protocol in a way which is clearly consistent with the spirit of the Convention and UNHCR guidance;
  - (d) the third state has given its explicit consent to (re-)admit the asylum seeker, and to provide the applicant with full access to a fair and efficient refugee determination procedure and with effective protection;
  - (e) there is evidence that the applicant will be admitted to the third state under conditions of safety and respect for the individual;
  - (f) the third state has been informed that the applicant is an asylum seeker and that the application has not yet been substantively examined.
19. Even where these requirements are fulfilled, before taking a decision to return an asylum applicant to a third state, every effort should be made, in accordance with UNHCR Executive Committee Conclusion 15, to take into account any reason why the asylum seeker may have requested asylum in the receiving state. States should consider assuming responsibility for the asylum application where:

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<sup>1</sup> Sometimes referred to as 'internal flight alternative'.

- (a) the applicant has close family ties in and/or substantial cultural ties with the country;
- (b) the applicant is in poor physical or psychological health, or for other health reasons;
- (c) the applicant has been in transit in an intermediate country, with which s/he has no links or contacts, for a limited period of time, and for the sole purpose of reaching his/her destination;
- (d) the applicant can demonstrate that on the facts of his/her case, the third state would, on the evidence of past practice, apply more restrictive criteria in determining his/her status, than the receiving state where the application has been lodged.

***Accelerated procedures***

20. ECRE is opposed to the use of accelerated procedures where they compromise necessary legal and procedural safeguards for the protection of refugees. If states persist in the use of accelerated procedures, minimum guarantees from which there can be no derogation must include:

- (a) access to free qualified and independent legal advice;
- (b) the services of a qualified and impartial interpreter;
- (c) access to UNHCR and/or non-governmental organisations;
- (d) a personal interview with the competent authority;
- (e) a suspensive right of appeal to an independent appellate body on both the merits and the legality of the decision taken by the competent authority.

21. Applications for asylum should never be channelled into accelerated procedures on the grounds that the state authorities consider that:

- (a) the fear of persecution is limited to a specific area in the country of origin and protection may be found if the applicant relocates within the country of origin (sometimes referred to as ‘internal flight alternative’);
- (b) the application lacks credibility;
- (c) the applicant comes from a so-called ‘safe country of origin’;
- (d) the exclusion clauses of Article 1.F. of the 1951 Geneva Convention apply;
- (e) the applicant used and insisted on the genuineness of false documents;
- (f) the applicant destroyed, damaged or disposed of relevant documentation; or
- (g) the application was submitted to forestall expulsion.

***Training***

22. All officials dealing with asylum seekers, including border officials, immigration officers, judges, and any others likely to come into contact with asylum seekers, should receive the appropriate level of continuous training to fulfil their role competently.

### ***Information***

23. Accurate and up-to-date legal and factual background information against which the decision-makers of the competent authority may assess the strength of an asylum claim should be available to the interviewing officer, the decision-maker, the applicant and the applicant's lawyer.

### ***Data protection***

24. The statements of and any information relating to the asylum seeker must remain confidential with all data being protected from, above all, the authorities of the asylum seeker's country of origin and/or agent of persecution.



**GUIDELINES ON  
FAIR AND EFFICIENT PROCEDURES  
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**September 1999**

**INTRODUCTION**

1. The European Council on Refugees and Exiles (ECRE) is a pan-European organisation concerned with the protection of and assistance to asylum seekers and refugees in Europe. Within this overall concern, ECRE promotes fair and efficient asylum procedures.
2. This paper starts from the position that asylum is a matter of fundamental human rights. Article 14 of the Universal Declaration of Human Rights is explicit when it expresses the conviction of the international community that there is a ‘right of all persons to seek and enjoy asylum from persecution’. The legal and procedural standards required for the treatment of persons seeking asylum in Europe derive from fundamental respect for the dignity of the individual and from legal obligations undertaken by governments by virtue of their accession to the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees and other relevant international human rights instruments.<sup>2</sup>
3. The purpose of a procedure for determining refugee status is clear: it is to establish whether an applicant is in need of protection against persecution. However, it is vital to recall, as is clearly stated in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status that “a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of refugee status does not therefore make him a refugee but declares him to be one.”
4. The 1951 Convention does not provide any specific guidance as to the procedures to be applied by states when undertaking refugee status determination, leaving it to each Contracting State to establish an appropriate procedure.<sup>3</sup> However, the UNHCR Handbook does recognise that special procedures should be established to examine applications for asylum and specifies the basic requirements which procedures should satisfy.<sup>4</sup>

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<sup>2</sup> These include the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the UN Convention against Torture and the UN Convention on the Rights of the Child.

<sup>3</sup> Paragraph 189 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

<sup>4</sup> Paragraph 192 of the UNHCR Handbook. See also paragraph (e) of EXCOM Conclusion No. 8 (XXVIII) on Determination of Refugee Status.

5. Despite the absence of any specific procedural requirements for the refugee determination process in the 1951 Convention, it is important to consider the implications of international law for such procedures. The principle of *non-refoulement* contained in Article 33 of the 1951 Convention implies the right to admission to the territory and the right to stay until any claim for refugee status is determined.<sup>5</sup> The principle concerns persons not only within the territory of a state but also at the border or in its territorial waters. It applies whether or not the persons have been formally recognised as refugees,<sup>6</sup> and includes not only a threat to life or freedom on account of race, religion, nationality, membership of a particular social group or political opinion but also a risk of being exposed to torture, to inhuman or degrading treatment or punishment.<sup>7</sup>
6. Legislation and policies which, intentionally or otherwise, prevent asylum seekers' entry to the territory and access to the asylum procedure, and thus protection from persecution, are clearly inconsistent with this human right standard. Entry and transit visa requirements, sanctions against carriers transporting passengers without the required documentation, and tighter border controls can prevent the admission of asylum seekers and deny access to asylum procedures. ECRE maintains that the objectives of a coherent procedure - fairness and efficiency - are predicated on the right of all asylum seekers, regardless of the legality of entry, to gain access to the procedure for the determination of their case.<sup>8</sup>
7. ECRE believes that the quality of the asylum procedure is also closely related to national reception policy and that certain standards of social reception are necessary for due process of law and a fair and efficient procedure. This paper should, therefore, be read in conjunction with the ECRE 'Position on the Reception of Asylum Seekers' (1997).<sup>9</sup>
8. ECRE reiterates its position that detention of asylum seekers obstructs and undermines the operation of a fair and efficient asylum procedure. However, ECRE considers it outside the scope of this paper to examine the procedural issues relating to detention. Reference should be made to the ECRE 'Position on the Detention of Asylum Seekers' (1996) for a detailed analysis of ECRE's policy statement on this issue.<sup>10</sup>
9. Throughout this paper, the terms 'asylum seeker,' 'asylum applicant' and 'asylum procedure' have been used for the sake of convenience. ECRE considers its recommendations on asylum procedures to be applicable to all asylum seekers - not only to asylum seekers who may be refugees as defined by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol but also to asylum seekers who may be in need of

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<sup>5</sup> Article 33 of the 1951 Convention provides: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

<sup>6</sup> Paragraph (c) of EXCOM Conclusion No. 6 (XXVIII) on Non-Refoulement.

<sup>7</sup> See Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the UN Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights.

<sup>8</sup> The issue of entry to the territory will be the subject of a forthcoming ECRE paper.

<sup>9</sup> This paper should also be read in light of ECRE's other policy statements on asylum, in particular the ECRE 'Position on Asylum Seeking and Refugee Women' (1997) and the ECRE 'Position on Refugee Children' (1996). Many of the procedural guarantees highlighted here in relation to women and children reflect the substantive issues considered in these policy positions.

<sup>10</sup> See also the ECRE 'Research Paper on Alternatives to Detention', September 1997 and 'Detention of Asylum Seekers in Europe: An Analysis and Perspectives', The Danish Refugee Council, ECRE & The Danish Centre for Human Rights, 1998.

international protection but who fall outside a proper interpretation of the terms of the 1951 Convention, often referred to as *de facto* refugees in the European context. This may concern a case covered by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the UN Convention against Torture, Article 7 of the International Covenant on Civil and Political Rights, or by a more broadly defined refugee concept.<sup>11</sup> The asylum procedure must be able to identify and grant an appropriate status to all persons in need of protection.

## CONTEXT

10. Although it was the Council of Europe which first raised the question of the harmonisation of asylum policies and procedures in European States,<sup>12</sup> the European Union inter-governmental organs have led the discussion in recent years, and shifted the terms of reference away from human rights and on to the geopolitical platform.<sup>13</sup> Since the early 1990s, the European Union has concluded a number of inter-governmental agreements relevant to national asylum procedures.<sup>14</sup> Although not all legally binding, these agreements have both reflected and lead developments in national asylum procedures within the European Union, and influenced procedures in other European countries.
11. On 1 May 1999, the European Union Treaty of Amsterdam entered into force.<sup>15</sup> This treaty provides that, within five years of its entry into force, Member States must adopt, *inter alia*, legally binding EU legislation on minimum standards for granting and withdrawing refugee status. In December 1998, the Council and the Commission adopted an Action Plan which prioritised this issue by agreeing that legislation on asylum procedures should be in place by the year 2001, and that concurrently a study be undertaken with a view to establishing the merits of a single European asylum procedure.<sup>16</sup> The Commission intends to submit a proposal for a Community legal instrument on asylum procedures as soon as possible. It has, therefore, issued a working document which is intended to launch a discussion on asylum procedures within the Council and

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<sup>11</sup> See OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and the Cartagena Declaration on Refugees of 19-22 November 1984. See also European Parliament resolution on the harmonisation of forms of protection complementing refugee status in the European Union, 10 February 1999.

<sup>12</sup> See 'Harmonisation of National Procedures Relating to Asylum', Recommendation R (81) 16, adopted by the Committee of Ministers of the Council of Europe on 5 November 1981. This recommendation calls on states to apply certain standards in their procedures and practices, including objective and impartial decision-making by a central authority, clear instructions to immigration authorities regarding refoulement, suspensive right of appeal, confidentiality, notification of and reasons for refusal and reading of rights.

<sup>13</sup> ECRE has elsewhere expressed its concerns on the steps taken by EU States towards harmonising their policies and practices in the field of asylum. See 'EU Policy on Minimum Guarantees for Asylum Procedures: NGOs' Shared Concerns', January 1995, ECRE; 'Safe Third Countries: Myths and Realities', February 1995, ECRE; and 'Position on the Implementation of the Dublin Convention in the light of lessons learned from the implementation of the Schengen Convention', December 1997, ECRE.

<sup>14</sup> See 'Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities' of 15 June 1990 (the Dublin Convention), European Communities No. 40 (1991) (entered into force on 1 September 1997); 'Resolution on manifestly unfounded applications for asylum', 'Conclusions on countries in which there is generally no serious risk of persecution', and 'Resolution on a harmonized approach to questions concerning host third countries' adopted by EU Ministers responsible for Immigration, meeting in London on 30 November to 1 December 1992; and 'Resolution on minimum guarantees for asylum procedures' adopted by the Justice and Home Affairs Council on 20 and 21 June 1995.

<sup>15</sup> The Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2 October 1997.

<sup>16</sup> Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice, 4 December 1998.

European Parliament. The European Union Member States now have an opportunity to reverse some of the restrictive practices which have characterised asylum procedures over the last decade. It is hoped that this ECRE paper will contribute to that debate as well as inspire policy discussions on asylum procedures in non-EU states.

12. Because of the overall increase in the number of persons applying for asylum in Europe over the last decade, particularly in Western European countries, the existing asylum procedures were put under heavy pressure. States responded by introducing multiple restrictive as well as deterrent measures in an attempt to contain and manage the number of asylum applications. Although Central and Eastern European States began the 1990s by adopting liberal policies on refugee questions, many states have started to emulate, in response to the accession criteria of the European Union, the restrictive and deterrent policies of their neighbours in Western Europe.<sup>17</sup>
13. National policies and practices have been adjusted to categorise asylum claims as inadmissible or manifestly unfounded on the ground that the asylum seeker could have sought protection in a third state through which s/he travelled. Some of these third countries have only recently started to introduce systems of refugee protection and their procedures are not fully developed. The countries of Central and Eastern Europe are a particular target of Western Europe's 'safe third country' policies even though it is common knowledge amongst their Western European neighbours that most of these states are in the early stages of refugee policy and procedure development.<sup>18</sup> Some Central European States have themselves introduced or intend to introduce the concept as part of their asylum procedure
14. The majority of Western European states have also devised a plethora of new procedures to screen out so-called 'abusive' and 'manifestly unfounded' applications and to expedite decision-making. The emphasis of such procedures is on speed and they are often critically lacking in procedural and legal safeguards. Moreover, in recent years, states, in a culture of disbelief, have introduced increasingly wide definitions of 'manifestly unfounded' claims and consequently applied expedited procedures to an increasingly large number of applications. The fact that states apply a wide interpretation of 'safe third country', 'safe country of origin' and 'manifestly unfounded' could undermine the basic principles of refugee protection.
15. It is crucial to ensure that the natural tension between fairness and efficiency in asylum procedures does not get out of balance. Measures intended to shorten procedures may lead to a lowering of legal safeguards while on the other hand, procedures offering a complex range of legal interventions may be considered inefficient by governments. However, experience has shown that the introduction of a variety of asylum procedures for different categories of asylum applications with the hope of shortening procedures often leads to procedural and legal jungles rather than to efficiency. Although eradicating delays in the asylum process is an important feature of a fair and efficient asylum procedure, curtailing or eliminating procedural and legal safeguards does not achieve effective decision-making.

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<sup>17</sup> See ECRE '*Position on the Enlargement of the European Union in relation to Asylum*', September 1998 and '*The Report on the Social and Legal Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries*', Danish Refugee Council, January 1999.

<sup>18</sup> See '*Safe Third Countries: Myths and Realities*', ECRE, February 1995. See also '*The Report on the Social and Legal Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries*', January 1999, and '*Safe Third Country Policies in European Countries*', 1997, both by the Danish Refugee Council.

Without certain essential guarantees, shortened asylum procedures run the risk that states will not be able to assess asylum applications fairly and may return an asylum seeker to persecution in contravention of their international law obligations.

16. In principle, ECRE considers that the most efficient and fairest way of approaching asylum determination is for states to have in place a single national asylum procedure, applicable to all asylum applications regardless of where the application is made or where the procedure is conducted, and which respects the basic guarantees set forth in this paper. This paper contains proposals which will address the desire of not only states, but also refugees, for the timely processing of applications, while at the same time ensuring that refugees' rights under international law are respected. In the following recommendations, ECRE seeks to establish a set of proposals and standards for the reassessment of national asylum procedures. This paper is structured chronologically and follows the asylum procedure from the initial asylum request through to the appeal stage.<sup>19</sup> The concluding recommendations relate to the need for well-trained officials, data protection, and access to high quality legal advice and information. ECRE calls on European States, whether acting separately at the national level or in concert at the international level, to adopt and implement policies and procedures that reflect the recommendations contained in this paper as constructive results will only be achieved if procedures are developed which respond simultaneously to the needs of fairness and efficiency.

## **THE REQUEST FOR ASYLUM AND ACCESS TO THE ASYLUM PROCEDURE**

17. Access to a procedure for the determination of refugee status is crucial to the concept of providing protection and respect for the fundamental principle of *non-refoulement*. The quality of the initial contact between an asylum seeker and the state's official is, therefore, very important. An incorrect decision at the point of access to the territory or failure to pass on the asylum request to the competent authority could have serious consequences for the applicant. It is therefore essential that those officials who first come into contact with asylum seekers are fully aware of both international and domestic legal requirements.<sup>20</sup> Any attempt to restrict access to the procedure by, for example, requiring that the asylum request is made within a specified period, or by demanding that the asylum request be formulated in specific terms, or by requiring that the asylum seeker is in possession of specific identity or travel documents may result in the asylum seeker being returned to his/her country of origin in contravention of the 1951 Convention.<sup>21</sup>

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<sup>19</sup> The issue of entry to the territory is not dealt with in this paper and will be the subject of a forthcoming ECRE paper. Nevertheless, the paper is drafted on the principle that all asylum applicants should be admitted to the territory.

<sup>20</sup> See the section below on implementation of procedures (paragraphs 133 – 161), and see also Council of Europe Recommendation on the training of officials who first come into contact with asylum seekers, in particular at border points, October 1998.

<sup>21</sup> As mentioned above in paragraph 8, the detention of asylum seekers may obstruct access to the asylum procedure. See ECRE Position on the Detention of Asylum Seekers, 1996.

## Recommendations

### *Request for asylum*<sup>22</sup>

18. All asylum seekers should be immediately given access to the asylum procedure, regardless of whether the request for asylum is made at the border or within its territory, including its territorial waters.<sup>23</sup>
19. Asylum seekers should not be prejudiced or penalised for requesting asylum within a state's territory rather than at its border or vice versa.
20. An asylum request should not be excluded from the asylum procedure for non-fulfilment of formal requirements. No specific wording or formulation should be required to request asylum and there should be no deadline within which an asylum request must be made.
21. Asylum seekers should not be required to possess any specific identity or travel document. Under no circumstances should asylum seekers be directed to the embassy or consulate of their country of origin in order to obtain such documentation.
22. Asylum seekers should be provided with an effective opportunity to lodge an asylum application as early as possible. They should be informed in a language they understand, of their rights and duties, of the procedure for applying for refugee status and protection, and they should be referred to a relevant non-governmental organisation<sup>24</sup> and/or lawyer for legal advice and assistance.
23. Where a woman applies for asylum as a dependant, she should be informed in private of her right to make an independent application for asylum at any stage and to be interviewed without the presence of family members. She should be advised to consult a legal representative before doing so.
24. All children are entitled to seek asylum in their own right and are entitled to an individual determination of their application, even though they may be travelling with their families.<sup>25</sup>

### *Requests at the border and the role of border officials*<sup>26</sup>

25. The decision on whether an asylum request is admitted rests with the central competent authority and not with border officials. Border officials should immediately inform, without exception, the competent central authority of all asylum requests.<sup>27</sup> In particular,

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<sup>22</sup> The term 'request for asylum' refers to any initial expression of the need for protection.

<sup>23</sup> See paragraphs (d) (ii) and (iii) of EXCOM Conclusion No. 82 (XLVIII) on Safeguarding Asylum.

<sup>24</sup> For the purposes of this paper, 'non-governmental organisation' should be understood to include non-governmental humanitarian agencies such as the International Red Cross and Red Crescent Movement.

<sup>25</sup> See below, paragraph 80 on unaccompanied children under 'Assistance'.

<sup>26</sup> See also below ('Training of Officials' paragraphs, 135 - 142).

<sup>27</sup> Paragraph (j) of EXCOM Conclusion No. 15 on Refugees without an asylum country provides: '...where an asylum-seeker addresses himself in the first instance to a frontier authority the latter should not reject his application without reference to a central authority.' See also Council of Europe Recommendation on the training of officials who first come into contact with asylum seekers, in particular at border points, October 1998.

border officials should inform the central competent authorities of any unaccompanied child at the border.

26. UNHCR, designated non-governmental organisations and/or legal advisors should be allowed access to all border areas at ports of entry in order to monitor arrivals. They should also be allowed access to those asylum seekers threatened with expulsion in order to give their opinion on any risk of *refoulement*, and to counsel the asylum seekers involved.

## **ADMISSIBILITY PROCEDURE FOR THE DETERMINATION OF STATE RESPONSIBILITY**

27. An increasing number of European States have introduced procedures to screen out applications which are considered not to be the responsibility of the receiving state. However, the same procedure may also be used to screen out applications which are deemed to be unworthy of a substantive examination and thus considered ‘manifestly unfounded’. Such procedures are referred to as, inter alia, ‘short procedures’, ‘pre-examination procedures’ or ‘pre-screening procedures’. Article 2 of the non-binding EU Resolution on Manifestly Unfounded Applications for Asylum allows states to operate admissibility procedures under which applications may be rejected very quickly on objective grounds. Due to varied state practice it is very difficult to distinguish between admissibility procedures to determine state responsibility for the examination of an asylum application on third country grounds and accelerated procedures to consider the merits of the application. Moreover, in those countries with an airport procedure, the situation becomes even more confused.
28. These procedures are often summary and lack the procedural and legal safeguards applied to the normal asylum procedure. Applicants may be denied access to the territory. Consequently, access to legal advice may be difficult, if not impossible. Asylum applicants may also be penalised on account of their illegal entry in violation of Article 31 of the 1951 Convention which requires that refugees be exempted from penalisation. Finally and most critically, there is often no suspensive right of appeal so that there is a great risk of *refoulement*. ECRE is opposed to the use of admissibility procedures to examine the merits of an asylum application.<sup>28</sup> This is the purpose of the asylum procedure. If states persist in retaining such procedures, as a minimum their scope should be radically reduced and essential procedural and legal safeguards should be attached.
29. Additionally, there is an increasing practice whereby immigration officers and border officials interview asylum seekers immediately upon arrival at the port of entry. Very often the interviewer has little or no expertise in international or national refugee law, has little or no knowledge of the country of origin, little or no training in proper interview techniques and has not acquired the inter-cultural skills to deal with asylum seekers sensitively. Interviews are often conducted without allowing the asylum seeker legal advice or representation; and the asylum seeker, who may be exhausted and distressed, has had no time to recover from what may have been a difficult journey. When the decision

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<sup>28</sup> In this regard, it is interesting to note UN Committee against Torture Communication No. 120/1999, Australia 25/05/99 where the Committee stated that the “State party’s argument raises a substantive issue which should be dealt with at the merits and not the admissibility stage”.

on the asylum application is based on, or in anyway influenced by, such an interview or the subjective opinion of one unqualified official, the risk of injustice is obvious.

## Recommendations

30. ECRE believes that neither the well-foundedness of an asylum claim nor the applicability of the exclusion clauses or the concept of internal relocation<sup>29</sup> should be assessed in admissibility procedures as this involves a complex examination of the merits of the case.
31. The admissibility procedure should precede the substantive examination of the asylum application and its purpose should be solely to determine:
  - (a) if the applicant has already found protection in another state (first country of asylum); or
  - (b) if the asylum application should be examined by a third state under the Dublin Convention or on third country grounds.<sup>30</sup>
32. Once the receiving state's responsibility for the asylum application has been confirmed, the application should enter the asylum procedure.<sup>31</sup>
33. ECRE emphasises the need to observe certain essential legal and procedural safeguards in applications considered under admissibility procedures to avoid the serious risk posed by the implementation of the concept of 'safe third countries' to the institution of asylum and the principle of non-refoulement. As a minimum, guarantees concerning access to free legal advice, an interpreter, UNHCR/non-governmental organisations and a suspensive right of appeal must apply without exception.<sup>32</sup>
34. Where the admissibility procedure is conducted at the border, time limits should be established and the legal and procedural guarantees mentioned in the above paragraph should apply. Time limits should be short as the detention of asylum seekers at the border is inherently undesirable and, in many instances, contrary to the norms and principles of international law.
35. Any interview at the admissibility stage should relate primarily to the determination of state responsibility for examining the asylum application and related issues such as identity, nationality, family ties and establishing the travel route of the asylum seeker. Asylum seekers should be informed that they will be given the opportunity to fully state the grounds for the application for asylum at a later stage.
36. Asylum seekers should not be interviewed in relation to the admissibility or the merits of their application immediately on arrival at the border or port of entry as they may be very tired, distressed, and in need of nourishment and rest. Any initial interview on arrival with the purpose of gathering limited personal details should be as brief as possible.

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<sup>29</sup> Sometimes referred to as 'internal flight alternative'.

<sup>30</sup> See minimum criteria which must be fulfilled before return can take place on these grounds.

<sup>31</sup> See below, paragraphs 54 – 120, on 'Asylum Procedure'.

<sup>32</sup> See below ('Asylum Procedure', paragraphs 54 – 120, and 'Appeals', paragraphs 121 - 132).

37. All asylum seekers should have the right to legal advice prior to any substantive interview relating to the admissibility of their application.
38. An unaccompanied child seeking protection should never be subjected to detailed interviews by border officials at the point of entry, nor prior to the provision of a guardian and/or legal representative.<sup>33</sup>

## DETERMINATION OF STATE RESPONSIBILITY

39. Increasingly, states are using the ‘safe third country’ concept to deny asylum seekers access to the asylum procedure on the grounds that they already enjoyed, could or should have requested and, if qualified, would actually be granted asylum in another country. Various terms are used to describe such a country: ‘country of first asylum’, ‘host third country’, ‘country responsible for examining the asylum application’, and ‘safe third country’.
40. There is no common acceptance in international law of the concept beyond the possibility of acknowledging that another country might be more appropriate to provide protection.<sup>34</sup> However, the concept has now been codified in the EU Dublin Convention.<sup>35</sup> Its purpose is to identify which EU Member State has responsibility for examining an asylum application and to ensure that only one State determines the application.<sup>36</sup> The Convention also allows Member States to expel asylum seekers to third states outside the European Union.<sup>37</sup> Readmission outside the EU territory takes priority over allocation of responsibility within the EU States under the Dublin Convention.<sup>38</sup>
41. From the perspective of refugee protection, a number of safeguards have been attached to the provisions of the Dublin Convention. It is, nevertheless evident that unless additional safeguards are established to ensure respect for human rights laws and international principles of refugee protection, the concept of ‘safe third country’ poses a serious risk to the institution of asylum and to the fundamental principle of *non-refoulement*. A state which returns an asylum seeker to a ‘safe third country’ runs the risk of violating the principle of *non-refoulement*, directly or indirectly, if the third state returns the refugee to a country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion or risks being exposed to torture, inhuman or degrading treatment or punishment.<sup>39</sup>

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<sup>33</sup> See section on ‘Special cases’, paragraphs 71 - 72.

<sup>34</sup> Article 31(1) of the 1951 Convention provides some basis for this notion since it requires that refugees come “directly from a territory where their life or freedom was threatened in the sense of Article 1” before a specific provision applies.

<sup>35</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990.

<sup>36</sup> For a detailed analysis of the Dublin Convention, see ‘*Position on the Implementation of the Dublin Convention in the light of lessons learned from the implementation of the Schengen Convention*’, ECRE, December 1997.

<sup>37</sup> Paragraph 3(5) of the Dublin Convention provides: ‘Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State’.

<sup>38</sup> Paragraph 1(d) of the 1992 EC Resolution on a Harmonised Approach to Questions Concerning Host Third Countries provides: ‘If the asylum applicant cannot in practice be sent to a host third country, the provisions of the Dublin Convention apply.’

<sup>39</sup> For further information, see ‘Safe Third Country’ Policies in European countries, Danish Refugee Council, 1997.

## **Recommendations**

### ***General requirements***

42. All decisions to return an asylum applicant to another state should be examined and decided upon by qualified personnel of the central authority competent to take decisions in the field of asylum and refugee matters.<sup>40</sup> These officials must have knowledge of the human rights situation and safety of the country of transit and any country to which s/he might be sent.
43. The burden of proof that the applicant passed through an intermediate country on the way to his/her destination and had an opportunity to request protection in that country is on the examining competent authorities.
44. The applicant should be given the possibility, at all stages of the procedure, of rebutting any presumption that s/he could have found protection in another state.
45. With regard to applications examined under the Dublin Convention, Member States should inform the asylum seeker of the possibility of seeking family reunification or transfer on the basis of humanitarian grounds under the Dublin Convention. This would enable the asylum seeker to present relevant information and facilitate the implementation of Articles 3(4) and 9 of the Convention.<sup>41</sup>
46. The applicant should be informed of the assessment of his/her case at the earliest opportunity to allow him/her to be able to lodge an appeal if necessary or to provide co-operation in voluntary transfer.

### ***Minimum safeguards***

47. In line with the principle that the best interests and protection of the child is of primary importance, applications made by unaccompanied minors should not be dealt with within an admissibility procedure.
48. No applicant should be returned to another state before determining that the following requirements are fulfilled:
  - (a) the applicant's life or freedom will not be threatened in the third state, within the meaning of Article 33 of the 1951 Convention;
  - (b) the applicant will not be exposed to torture, inhuman or degrading treatment by the third state, within the meaning of Article 3 of the European Convention on Human Rights, Article 3 of the UN Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights;

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<sup>40</sup> See also below ('Asylum Procedure' and 'Implementation of Procedures') and Paragraph (e)(iii) of EXCOM Conclusion No. 8 (XXVIII) on Determination of Refugee Status.

<sup>41</sup> Article 9 of the Dublin Convention provides: 'Any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires.'

- (c) the third state is a party to and implements the 1951 Convention and its 1967 Protocol in a way which is clearly consistent with the spirit of the Convention and UNHCR guidance;
- (d) the third state has given its explicit consent to (re-)admit the asylum seeker, and to provide the applicant with full access to a fair and efficient refugee determination procedure and with effective protection;
- (e) there is evidence that the applicant will be admitted to the third state under conditions of safety and respect for the individual;
- (f) the third state has been informed that the applicant is an asylum seeker and that the application for asylum has not yet been substantively examined.<sup>42</sup>

49. Even where these requirements are fulfilled, before taking a decision to return an asylum applicant to a third state, every effort should be made to take into account any reason why the asylum seeker may have requested asylum in the receiving state.<sup>43</sup> States should consider assuming responsibility for the asylum application where:

- (a) the applicant has close family ties in and/or substantial cultural ties with the country;
- (b) the applicant is in poor physical or psychological health, or for other health reasons;
- (c) the applicant has been in transit in an intermediate country, with which s/he has no links or contacts, for a limited period of time, and for the sole purpose of reaching his/her destination;
- (d) the applicant can demonstrate that on the facts of his/her case, the third state would, on the evidence of past practice, apply more restrictive criteria in determining his/her status, than the receiving state where the application has been lodged.

### ***The decision***

50. All applications considered to be admissible by a state should be admitted to the asylum procedure of that state.

51. If a decision is taken to transfer an asylum applicant to a third state, the applicant should be informed, in a language s/he fully understands, and in writing, of the decision to transfer him/her to another state. The applicant should be provided with a document, in the language of the third state, stating that the application for asylum has not been examined on its merits but was rejected solely on third country grounds.

52. The cost of transfer to the third state should not be borne by the asylum seeker.

### ***Appeal***

53. The applicant should be informed of, and provided with, the opportunity to appeal to a judicial or other independent competent body against the decision to transfer him/her to another state. The appeal should have suspensive effect and should give the applicant

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<sup>42</sup> Such safeguards should be built into readmission agreements if they are to be applied to asylum applicants.

<sup>43</sup> Paragraph (h)(i), (ii), (iii) of EXCOM Conclusion No. 15 (XXX) on Refugees without an Asylum Country.

sufficient time to gather and submit supporting evidence, and instruct a legal advisor.

## **ASYLUM PROCEDURE**

54. ECRE is of the opinion that the asylum procedure will be fairer and more efficient if protection remains its central focus. It should not be based on disbelief, deterrents and techniques devised to undermine asylum applications. A procedural environment that is oriented to co-operative inquiry and which relies less on an adversarial approach lends itself to fair refugee status determination and the efficient use of national resources. It is a basic principle of legal culture that an applicant must have the right to state his or her claim fully. This is particularly true when fundamental values such as personal integrity and freedom are at stake. Any reduction or denial of this right creates unacceptable risks for the capacity of government authorities to properly and fairly execute their decisions.
55. Regrettably, some European States have established procedures that appear to be based instead on disbelief and have compromised their capacity to correctly assess the need for protection. Over the last decade, European asylum procedures have become increasingly complex as expedited procedures have been introduced to deal with applications considered to be so obviously without foundation as not to merit the normal substantive examination. These procedures, aimed at sifting out ‘manifestly unfounded’ applications speedily, are justified by states on the grounds that they ensure the speedy removal of persons with no claim to asylum and that they save resources.
56. However, these procedures are increasingly applied to asylum applications that are not so obviously without foundation. They are applied to applications simply because, for example, the asylum seeker claimed asylum at the airport, the asylum seeker does not possess the required identity or travel documents for entry, or the asylum seeker did not request asylum immediately on arrival in the country.
57. Some states also channel applications into an accelerated procedure because the asylum seeker is from a particular country of origin which is considered to be generally safe. The notion of ‘safe country of origin’ does not relate to an individual assessment of the asylum applicant’s status and as such it is wholly unacceptable to maintain the concept as part of a procedure which is based upon the recognition of individual rights. To resort, as some states do, to applying a notion of ‘safe country of origin’ which effectively excludes certain nationals from having their asylum claim properly examined, amounts to a geographical reservation to Article 1A(2) of the 1951 Geneva Convention. Such a reservation is explicitly prohibited by Article 42 of the 1951 Geneva Convention.
58. The only purpose of an asylum procedure is to establish whether an applicant is in need of protection or not. It is, therefore, absurd to operate a procedure, as many European States do, whereby the decision that an application is ‘manifestly unfounded’ is taken at the outset of the process rather than as a result of the procedure. It is all the more grave where the consequent procedure, with its emphasis on speed, is characterised by a critical deficiency of legal and procedural safeguards with the result that it may render ‘unsafe’ first instance decisions. This means, at worst, that refugees may be refouled to their country of origin to face persecution and death.

59. ECRE is opposed to the use of accelerated procedures which compromise the protection of refugees. Where states persist in retaining such accelerated procedures, as a minimum their scope should be radically reduced and certain essential legal and procedural safeguards should be assured. The Executive Committee of UNHCR has also underlined the need for appropriate procedural guarantees in refugee status determination by emphasising the need to observe basic safeguards in applications that may appear to be ‘manifestly unfounded’.<sup>44</sup>
60. ECRE would argue that, within the normal asylum procedure, speedier decisions should and can be taken on applications which clearly meet the criteria for recognition of refugee status set out in the 1951 Convention and the 1967 Protocol. Indeed, the competent authorities should be able to waive the need for an interview where the asylum application and supporting documentation provide sufficient evidence for an immediate grant of refugee status.
61. States should allocate appropriate human and financial resources to the asylum procedure so that it is both fair and efficient. In particular, States should invest appropriate resources in the initial stages of the procedure to facilitate the highest quality first decisions on asylum applications.
62. A fair procedure requires well-informed and qualified decision-makers who are able to interview the asylum applicant in conditions which are conducive to establishing the facts. One of the most crucial elements of the asylum procedure is an environment that facilitates communication of personal testimony, assisted by respect for the confidentiality of the proceedings. The task of establishing the facts should be shared between the competent authority and the asylum applicant. A fair procedure, therefore, also requires well-informed asylum applicants who receive independent and competent legal advice.
63. The availability of qualified, independent and impartial interpreters is vital. In the majority of cases, asylum seekers do not speak or understand the national language. Cultural differences may make communication even more difficult. Investment in good interpreters is not only a question of fairness, but leads to a better assessment of factual situations from the very beginning. This helps to make correct decisions and to increase confidence which in turn serves efficiency.
64. ECRE maintains that an effective asylum procedure depends on good quality initial decision-making. A credible process depends on principled and consistent decision-making nationally and within the international protection system.<sup>45</sup> Decisions are not efficient if they lack legitimacy. Fully reasoned decisions are an essential pre-requisite for fundamental fairness in any judicial or administrative process, in particular because they allow asylum seekers to know why the claim has been rejected and, if so decided, to make a meaningful appeal, reducing the length and expense of the system as a whole.

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<sup>44</sup> Paragraph (e) of EXCOM Conclusion No. 30 (XXXIV) on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status.

<sup>45</sup> Particularly with regard to the implementation of the Dublin Convention. See the ECRE Position on the Implementation of the Dublin Convention in the light of lessons learned from the implementation of the Schengen Convention, December 1997.

65. The principle of the best interests of the child should inform all procedures affecting the child.

## **Recommendations**

### *Provision in legislation*

66. Each state should legally adopt and implement procedures for the fair and efficient processing of all asylum claims, including measures on access to the asylum procedure and the designation of the competent authority.
67. Each state should refer specifically in their asylum legislation to the rights and duties of asylum seekers during the asylum procedure and the additional rights of vulnerable groups such as accompanied and unaccompanied child asylum seekers, victims of gender-related persecution, survivors of torture and traumatised asylum seekers.

### *Competent authorities*<sup>46</sup>

68. All requests for asylum, as well as all cases in which there is any indication that an asylum request might be involved, should be examined and decided upon by qualified personnel of a specialised central authority competent to take decisions in the field of asylum and refugee matters, including the determination of refugee status in the first instance.<sup>47</sup>
69. All qualified personnel of the competent authority should have the necessary knowledge and experience in the field of asylum and refugee matters and an understanding of the facts and circumstances concerning the application, including knowledge of the human rights situation in the applicant's country of origin.<sup>48</sup>

### *Information on the procedure*

70. The central authority should promptly inform all asylum seekers of the asylum procedure, including an explanation of their rights and duties and how to exercise them, at the earliest possible stage, prior to the first interview on the merits of their application. Asylum seekers should also be kept well informed throughout the whole procedure. The possible outcomes of the asylum procedure and their consequences should be carefully and fully explained. As a minimum, information should always be provided in writing in the host State's language, and orally in a language which the asylum seeker fully understands. In the case of refugee children, this information should be provided in an age-appropriate manner, and should also be provided to the child's guardian.

### *Special cases*

71. Applications from unaccompanied children should be prioritised. Keeping children in an insecure situation for long periods of time can be extremely harmful.

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<sup>46</sup> See also below ('Implementation of Procedures', paragraphs 133 - 161).

<sup>47</sup> Paragraph (e)(iii) of EXCOM Conclusion No. 8 (XXVIII) on Determination of Refugee Status.

<sup>48</sup> See also below ('Training of officials' and 'Information', paragraphs 135- 146)

72. Any application in which there is evidence that torture is involved should be prioritised bearing in mind the special needs of torture survivors in the asylum procedure.

### *Legal advice*<sup>49</sup>

73. Each applicant for asylum should immediately be informed of the right to qualified independent legal advice and representation upon arrival in the territory and how to exercise it without delay. This includes, where the financial situation of the asylum seeker requires, the provision of free legal assistance by the host state. This right should be provided throughout the determination procedure, prior to the first interview and including any appeals.

74. Client-lawyer confidentiality must be respected at all times.

75. Legal advisors should be informed of all decisions relating to their client's application. Any procedural time limits should only operate from the time that both the applicant and his/her legal advisor have been informed.

### *Assistance*

76. Immediately upon arrival, before any initial substantive interview, asylum seekers should be provided with all necessary assistance, including access, if necessary, to medical services, food and rest to enable them to be physically and mentally equipped to deal with the asylum procedure. Asylum seekers who may be survivors of torture should be offered specialist counselling and treatment. Unaccompanied children should be provided at each point in the procedure with psycho-social support as appropriate.

77. Any medical examination should be conducted by an independent and experienced clinician.

78. Prior to any substantive interview and throughout the procedure, all asylum seekers should be offered the opportunity and time to contact a UNHCR representative and/or a representative of a non-governmental organisation.<sup>50</sup>

79. Asylum seekers should be given reasonable time to adequately prepare their asylum application and to obtain background information to put forward in support of their application.<sup>51</sup>

80. Unaccompanied children seeking protection should be provided immediately upon arrival with a guardian who will work closely with the appointed legal representative. Guardians should be carefully selected, trained and supported in their work. As far as possible, they should be matched to take account of the child's ethnic, cultural, religious and linguistic background. In addition to child welfare expertise, guardians should have some knowledge of refugee law and an understanding of the situation in the child's country of origin. The guardian should ensure that decisions on status determination are in the

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<sup>49</sup> See also below ('Implementation of Procedures', paragraphs 133 - 161).

<sup>50</sup> Paragraph(e)(iv) of EXCOM No. 8 (XXVIII) on Determination of Refugee Status.

<sup>51</sup> See paragraphs 195 and 205 of the UNHCR Handbook.

child's best interests. They should consult with the child so that the child's views are taken into account by the decision-making authorities.<sup>52</sup>

### ***Interpreters***

81. Unless the asylum seeker speaks fluently a language fully understood by the interviewing officer and the legal representative, a competent, professionally qualified, trained and impartial interpreter, who is guided by a code of conduct, should be made available.<sup>53</sup> Asylum seekers should be made aware of this right and enabled to exercise it. This service should be provided for out of public funds and should be available at all phases of the asylum procedure, including initial interviews with border officials.
82. The authorities should ensure that the asylum seeker understands the interpreter's role and does not mistake it for that of either an advocate or a decision-maker. The authorities should ensure that the asylum seeker and interpreter are able to understand each other fully, prior to the commencement of the interview. The language used should be the one requested by the asylum seeker and not merely a language which s/he is 'supposed' to understand.
83. Interpreters should interpret accurately. The authorities should ensure that the interpreter remains neutral and objective during the interview process and respects the confidentiality of all information that concerns the applicant.
84. All necessary steps should be taken to ensure that interpreters are not perceived by the applicant as being supporters of the authorities or group from which they are fleeing.
85. An interpreter of the same sex as the asylum applicant should be available on request, or where the competent authorities deem that it may be necessary, and applicants should be promptly informed of this option.
86. All children seeking protection in their own right should be provided with interpreters sensitive to both refugee and child issues.

### ***Individual and group determination***

87. All applications for asylum should be guaranteed an individual, impartial and substantive examination of all circumstances.
88. In circumstances where a whole group of persons is exposed to persecution, the individual examination may be limited to determining whether the individual belongs to the group in question.

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<sup>52</sup> See ECRE Position on Refugee Children, November 1996.

<sup>53</sup> Paragraph (e)(iv) of EXCOM Conclusion No. 8 (XXVIII) on Determination of Refugee Status.

## *Interviews*

89. Every asylum seeker should be given a fair and complete interview by the competent authorities.<sup>54</sup> Asylum seekers should never be interviewed by police or border guards on the substance of their asylum claim. The right to an interview may be waived where the competent authority considers it possible to grant refugee status or a complementary form of protection on the basis of documentation submitted.
90. Every asylum seeker should be informed clearly of the purpose and importance of the interview. Furthermore, asylum seekers should be informed by the interviewer of his/her rights and duties prior to the interview. This should include an assurance that information provided by the asylum seeker will only be used for the purposes of the asylum procedure.<sup>55</sup> In particular, genuine and stringent steps should be taken to assure the asylum seeker that none of the information revealed during the interview will be disclosed to the authorities of his/her country of origin.
91. The applicant's legal advisor and UNHCR/non-governmental representative should have access to the interview with the permission of the applicant. His/her lawyer or representative should have the opportunity to intervene to clarify matters and should have the right to inspect the written report and suggest amendments before any decision is taken.
92. Any procedure or determination which affects a refugee child should be designed to allow the child to be heard. Any meeting for this purpose should take place in a child-sensitive way and in the presence of the child's guardian or a trusted family member. The child may either be heard directly, or a guardian or legal representative may put forward the child's views. If possible, provision should be made for an expert assessment of the child's ability to express a well-founded fear of persecution.<sup>56</sup> Oral interviews with children should never be used for the primary purpose of finding discrepancies. They should be allowed to express themselves in their own way and at their own pace.
93. Interviewers should be aware that an applicant may have a mental or emotional disturbance which impedes a normal examination of his/her case.<sup>57</sup> Where the interviewer believes that an applicant may have such a condition, the interview should be terminated and medical advice concerning the health of the applicant should be sought from a clinician. This should include whether the condition is temporary or permanent.
94. If the interviewer considers that the applicant may be a survivor of torture, s/he should be referred to a doctor, specialised in the examination of torture survivors where such expertise is available.
95. Asylum seekers should be allowed reasonable time to present the basis of their claim as freely as possible. However, very lengthy interviews should be avoided. Follow-up interviews should be used as appropriate.

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<sup>54</sup> Paragraph (e)(i) of EXCOM Conclusion No. 30 (XXXIV) on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum.

<sup>55</sup> Paragraph 200 of the UNHCR Handbook.

<sup>56</sup> Paragraph 219 of the UNHCR Handbook calls for "a liberal application of the benefit of the doubt" in child cases.

<sup>57</sup> See paragraphs 206-212 of the UNHCR Handbook.

96. Special care is necessary in order to identify gender-related persecution or sexual abuse.<sup>58</sup> The interviewer should be particularly conscious of the need for discrete and tactful communication that takes account of possible reactions to trauma and is culturally sensitive to gender roles. An interviewer of the same sex as the asylum applicant should be available on request, or where the competent authorities deem that it may be necessary. The asylum applicant should be promptly informed of this choice, as well as the option to be interviewed without the presence of family members.
97. Reliance on evidence and information gathered in interviews falling below these standards should be prohibited.

***Establishing the facts and the credibility of the asylum claim***

98. It is the duty of the interviewer to assist the applicant to substantiate the claim to refugee status by drawing his/her attention to the importance of providing all available evidence and by obtaining documentation from a variety of sources, including non-governmental, in support of the application.<sup>59</sup>
99. The absence of valid identity documents should not affect the credibility of an asylum claim nor result in the application being determined to be manifestly unfounded. Recognition of refugee status is not dependent on the production of any particular formal evidence.
100. The authenticity of official documentation issued by authorities in the country of origin should never be checked with the authorities in that country of origin, in order to safeguard confidentiality for the applicant and to avoid endangering the safety of family members who still reside in the country of origin. Moreover, under no circumstances should asylum applicants be required to obtain documentation from the embassy or consulate of their country of origin.
101. Where an asylum seeker claims to be a victim of torture and seeks to provide medical evidence in support of the claim, no negative decision should be made until that evidence has been considered.
102. Independent medical evidence verifying allegations of torture should be recognised as credible proof of an applicant's claim. Where the competent authorities dismiss expert medical corroboration of a claim of torture, reasons for the dismissal should be communicated to the applicant in writing.
103. Recognition of refugee status does not require asylum applicants to prove every fact alleged in the claim to refugee status or to produce formal evidence.<sup>60</sup> A lack of corroboratory evidence is not sufficient grounds to reject the application. It is sufficient

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<sup>58</sup> For a detailed analysis of the situation of women asylum seekers, see '*Position on Asylum Seeking and Refugee Women*', ECRE, December 1997.

<sup>59</sup> Paragraph 196 of the UNHCR Handbook provides that 'it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application', and Paragraph 205(b)(i) provides: 'the examiner should ensure that the applicant presents his case as fully as possible and with all available evidence.'

<sup>60</sup> Paragraph 203 of the UNHCR Handbook provides: '...it is hardly possible for a refugee to 'prove' every part of his case...'

for them to show that their fear of persecution is a reasonable one. If this standard of proof is satisfied, they should be recognised as refugees.

104. Asylum applicants should be given the benefit of the doubt where a credible account of their fear of persecution is provided and once all available evidence has been obtained and checked.<sup>61</sup>
105. Evidence obtained by the competent authority should be revealed to the applicant and his/her legal representative unless non-disclosure can be justified.
106. If faced with contradictory or unclear statements, the interviewer should allow the applicant the opportunity to provide an explanation. If the inconsistencies remain, it may be necessary to schedule a further interview.<sup>62</sup> Interviewers and decision-makers should understand that asylum applicants are often afraid to speak freely and give a full and accurate account of the claim.<sup>63</sup> This may be due to many reasons, including the effects of trauma, shame or fear. Interviewers and decision-makers should consider that there may be a rational explanation where:
  - (a) the applicant withholds information;
  - (b) the applicant provides new information during a later interview;
  - (c) the applicant delays the submission of the application;
  - (d) the applicant gives an account of gender-specific harm or an account of torture or ill-treatment at a late stage in the procedure;
  - (e) the applicant's statement contains discrepancies, inconsistencies or concealment which are not material to the claim and the claim is otherwise plausible and coherent.<sup>64</sup>
107. Where a person is being interviewed to corroborate the claim of his/her spouse or relative, a lack of knowledge of the spouse's or relative's activities and experiences or contradictory answers should not undermine the credibility of the asylum claim as long as these inconsistencies do not raise doubts about the general truth of the application.
108. The UN Convention on the Rights of the Child defines a 'child' as any person under the age of 18. In determining age, young asylum seekers should be given the benefit of the doubt. Where an age assessment is considered necessary, an independent medical assessment by an experienced paediatrician should be made with the consent of the asylum seeker. Such an age assessment should take into account not only the child's physical appearance and psychological maturity but also cultural and ethnic variation in these

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<sup>61</sup> Paragraph 196 of the UNHCR Handbook provides: '...if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.' Paragraph 203 also provides: 'It is therefore frequently necessary to give the applicant the benefit of the doubt.'

<sup>62</sup> Paragraph 199 of the UNHCR Handbook provides: 'While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts.'

<sup>63</sup> Paragraph 198 of the UNHCR Handbook provides: 'A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.'

<sup>64</sup> Paragraph 199 of the UNHCR Handbook provides: 'Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.'

factors. However, it should always be borne in mind that such assessments may not always be precise.

109. All refugee children who are capable of forming their views have the right to express these views during the asylum procedure.<sup>65</sup> These views should be taken into account and given due weight, in accordance with age and maturity.
110. Fingerprints should only be taken with a view to establishing the identity of an asylum seeker where identity cannot be established by other means or where there is reason to believe that the asylum seeker has lodged multiple applications in other states. The asylum seeker must be informed of the purpose of taking fingerprints.
111. DNA testing should only be carried out with a view to establishing family ties where such ties cannot be established by other means. It should only be carried out after the asylum seeker has been fully informed of the reasons for the test and the process, and has given consent.

#### *Copies of documentation relating to case*

112. Complete files concerning the asylum application should be made available to the asylum seeker and the legal or other representative.

#### *The decision*

113. The decision on an application for asylum should be taken by the competent authority. Each state should grant refugee status to all asylum seekers fulfilling the criteria of Article 1 of the 1951 Convention.
114. The decision on an asylum application should be communicated to the applicant in writing in a language s/he understands and to his/her legal advisor. If the written decision can only be provided in the language of the host country, then it should additionally be communicated orally to the asylum applicant in a language s/he fully understands.
115. A negative decision should clearly and fully state the specific reasons for the rejection of that application, the evidence which was relied on, as well as provide information on the asylum seeker's right to appeal against it, any time-limits and the provisions of the appeal procedure.<sup>66</sup> States should also endeavour to provide reasons for positive decisions as this would assist in the development of consistent jurisprudence.
116. UNHCR should have the right to give its opinion on all decisions that an individual case is manifestly unfounded.

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<sup>65</sup> Article 12 of the Convention on the Rights of the Child provides: 'States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

<sup>66</sup> Recommendation R(81)16 of the Committee of Ministers of the Council of Europe provides: 'In the event of an unfavourable decision, [the asylum seeker] shall be informed in an appropriate manner of the reasons on which the decision is based and the possibilities of appeal or review open to him.'

117. Where an asylum seeker is found, after due consideration of the asylum claim, to qualify for refugee status on the basis of the criteria laid down in the 1951 Convention, or to be in need of international protection on other grounds or is authorised to stay in the state for other compelling reasons, s/he should be provided with appropriate documentation certifying that status.<sup>67</sup>

### *Accelerated procedures*

118. ECRE is opposed to the use of accelerated procedures that compromise necessary legal and procedural safeguards for the protection of refugees. If states persist in the use of accelerated procedures, minimum guarantees from which there can be no derogation must include:

- (a) access to free qualified and independent legal advice,
- (b) the services of a qualified and impartial interpreter,
- (c) access to UNHCR and/or non-governmental organisations,
- (d) a personal interview with the competent authority,
- (e) a suspensive right of appeal to an independent appellate body on both the merits and the legality of the decision taken by the competent authority.<sup>68</sup>

119. Applications for asylum should never be channelled into accelerated procedures on the grounds that the state authorities consider that:

- (a) the fear of persecution is limited to a specific area in the country of origin and protection may be found if the applicant relocates within the country of origin (sometimes referred to as 'internal flight alternative');
- (b) the application lacks credibility;<sup>69</sup>
- (c) the applicant comes from a so-called 'safe country of origin';
- (d) the exclusion clauses of Article 1.F. of the 1951 Geneva Convention apply;
- (e) the applicant used and insisted on the genuineness of false documents;
- (f) the applicant destroyed, damaged or disposed of relevant documentation; or
- (g) the application was submitted to forestall expulsion.

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<sup>67</sup> See paragraph e(v) of EXCOM Conclusion No. 8 (XXVIII) on Determination of Refugee Status and paragraph (b) of EXCOM Conclusion No. 35 (XXXV) on Identity Documents for Refugees.

<sup>68</sup> Paragraph (e)(iii) of EXCOM Conclusion No. 30 on The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum provides: 'an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory...'. See also 'Fair and Expeditious Asylum Procedures', 1994, UNHCR which provides: 'The Office considers...that any accelerated procedure must be accompanied by...a review or appeal possibility, or its equivalent, with suspensive effect before a negative decision is implemented.'

<sup>69</sup> In this regard, it is interesting to note the decision of the European Commission in the case of *Hatami v. Sweden* which found that Sweden was in breach of Article 3 of the European Convention on Human Rights because the state had placed more weight on an alleged inconsistency between the information provided to a police officer without full interpretation and a later full account of persecution and torture than the later full account, which was moreover consistent with independent medical evidence.

### ***Repeat applications***

120. The competent authority should re-examine an application for asylum where it is alleged that the circumstances relevant to the asylum application have changed or where the applicant submits new evidence which substantiates his/her request for protection.

### **APPEALS**

121. An independent review of both the merits and legality of decisions taken by the competent authority is a necessary safeguard to ensure that no refugee is returned to face persecution. Although it provides a safeguard, it should not be used as an excuse for poor first instance decision-making. Good quality well-reasoned initial decisions will clarify whether or not there are grounds for appeal, and if so, refine the issues to be dealt with on appeal, reducing the length and expense of the system as a whole. An independent review also provides a mechanism for ensuring that there is consistent interpretation of the law.
122. The nature of appellate bodies, their jurisdiction, powers and procedures vary significantly in European States. Regrettably, in recent years there has been a trend to restrict the right of the appellant to remain in the country during the appeal procedure. For a refugee, the right to appeal from his/her country of origin may be tantamount to a death sentence. Some European States have also imposed excessively short time limits to both lodge an appeal and prepare for an appeal hearing with the result that this may in practice deny the asylum seeker the possibility to appeal or render the appeal ineffective due to insufficient preparation. It should also be noted that the absence or inadequacy of financial legal aid or free legal assistance for the preparation of appeal cases may result in injustice.

### **Recommendations**

123. In the case of any decision not to grant refugee status according to the 1951 Geneva Convention, and any decision not to grant a complementary form of protection, the applicant should have the right and the means to appeal, both on the merits of the application and the legality of the decision, to a judicial or other independent competent body.<sup>70</sup>
124. Where an appeal is lodged, be it to a national or international appellate body, it should have suspensive effect, i.e. the asylum seeker should be allowed to remain in the host state, with the same rights and duties, pending a decision on appeal.<sup>71</sup> There should be no derogation from this principle.

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<sup>70</sup> Paragraph (e)(vi) of EXCOM Conclusion No. 8 (XXVIII) Determination of Refugee Status provides: 'If the applicant is not recognized, he should be given a reasonable time to appeal for formal reconsideration of the decision...'. See also Recommendation No.R(98)13 of the Council of Europe Committee of Ministers to Member States on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights.

<sup>71</sup> Paragraph (e)(vii) of EXCOM Conclusion No. 8 (XXVIII) Determination of Refugee Status provides: 'The applicant...should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.'

125. The asylum seeker should be given sufficient time both to lodge an appeal and to prepare for the appeal hearing.<sup>72</sup> Consequently, a reasonable period of notice of the appeal hearing should be provided. Time limits should be both realistic and flexible.
126. All asylum seekers should have the right to qualified and independent legal advice in the preparation for the appeal hearing and legal representation before any appellate authority. Free independent and qualified legal advice and representation should be provided by the State where the financial situation of the asylum seeker requires.
127. An appeal should include a right to an oral hearing before the appellate body. Asylum seekers and their legal representatives should have the right to attend the appeal hearing and present evidence before the reviewing authorities.
128. The appeal process should provide for the development of effective pre-hearing procedures to resolve disputed facts and to focus on the issues to be considered at appeal. The time reserved for the appeal hearing should be adequate to allow for a full presentation of the points of appeal.
129. UNHCR should have the right to give their opinion on all individual cases under review.
130. The appellate body should consist of legally qualified personnel with specialist knowledge of international and national refugee and human rights law and continuing specialist training.
131. A fully reasoned written judgement should be communicated promptly to the appellant and his/her legal advisor.
132. The appellant should have the possibility to request the right to apply for judicial review of the decision of the appellate body.

## **IMPLEMENTATION OF PROCEDURES**

133. A fair and efficient procedure requires qualified, trained and impartial decision-makers with access to authoritative and impartial information. Personnel who are aware of the situation in particular countries and who have the necessary background information can assess factual situations much more quickly than persons without such knowledge.
134. In some European countries there is an absence of free legal assistance and/or financial legal aid. In other countries, free legal advice may be limited or the amount of financial legal aid wholly inadequate. The provision of qualified and independent legal advice is essential to the functioning of a fair asylum procedure.

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<sup>72</sup> Paragraph (e)(vi) of EXCOM Conclusion No. 8 (XXVIII) Determination of Refugee Status.

## **Recommendations**

### ***Training of officials***<sup>73</sup>

135. All officials dealing with asylum seekers, including border officials, immigration officers, and any others likely to come into contact with asylum seekers, should receive the appropriate level of training necessary to recognise an asylum claim and to refer the claim to the competent authority.
136. All officials involved in decision-making should receive initial and continuing specialist training in asylum law and relevant international human rights law and be kept fully informed of developments in these fields. Particular emphasis should be placed on the need to respect the principle of *non-refoulement*, information on the situation in the countries of origin, and cultural awareness. Training should also cover specific sensitive issues such as gender, torture, post-traumatic symptoms, sexual orientation, and child development.
137. Training should provide guidance on sensitive and empathetic interview techniques, and working with interpreters. This would raise awareness among interviewers and decision-makers of the need for discrete and tactful communication which takes account of cultural and societal differences, gender and possible reactions to trauma and enable interviews to be conducted more effectively.
138. It is important that the role, status and treatment of women in the country of origin are fully understood by decision-makers.
139. Those who interview children and assess their claims should be appropriately trained, with additional knowledge of child development and the Convention on the Rights of the Child. All border officials should be trained in how to treat unaccompanied children.
140. Training should teach analytical decision-making techniques so as to improve the quality of decision-making at all levels.
141. Training programmes for interpreters, and for those employing them, should emphasise the need to interpret accurately and aim to improve overall technical knowledge.
142. External agencies such as UNHCR and non-governmental organisations working with refugees, together with medical and psychiatric experts, should be consulted about, and invited to participate in, training programmes. All training programmes should be evaluated.

### ***Information***

143. Accurate and up-to-date legal and factual background information against which the decision-makers of the competent authority may assess the strength of an asylum claim should be available to the interviewing officer, the decision-maker, the applicant and the

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<sup>73</sup> See also Council of Europe Recommendation on the training of officials who first come into contact with asylum seekers, in particular at border points, October 1998.

applicant's lawyer. This should include information which has relevance as evidence in claims related to gender persecution, for example, the position of women before the law, the prevalence of practices such as female genital mutilation and the incidence and forms of other reported gender-specific violence. The material upon which an assessment of a country situation is based should be subject to public scrutiny. Information should be collected from a wide range of independent sources such as UNHCR, non-governmental organisations and academic institutions and should include information on the human rights situation in particular countries, including the situation in countries of origin, 'first countries of asylum' and transit countries, key issues, relevant jurisprudence and legal developments. Foreign policy considerations should not affect the assessment of the asylum claim.

144. Comprehensive and updated country specific information on issues such as prisons and methods of torture as well as medical documentation of accounts of torture and ill-treatment should be collected as evidence in torture victims' claims.
145. Independent documentation and research centres should be established as the information base for such data. Asylum seekers, legal representatives, UNHCR and appropriate non-governmental organisations should have access to the information held by the documentation centre.
146. All officials involved in the determination process should seek advice from experts on particular issues relevant to the asylum claim.

#### ***Legal advice and financial legal aid***

147. Each asylum applicant should be provided with free independent and qualified legal advice and representation throughout all stages of the asylum procedure, including any appeals, where the financial situation of the applicant requires.
148. Financial legal aid payments should reflect the time and disbursements required for the competent representation of each asylum case and should be administered by a body independent of the executive arm of government. All those receiving public funds for asylum work should be accountable for the costs of case management.
149. The professional competence of lawyers providing legal advice and representation to asylum seekers should be regulated by the state's legal professional body, which should ensure a quality standard, supported by compulsory specialised training and continuing education for asylum work.

#### ***Data protection***

150. The statements of and any information relating to the asylum seeker must remain confidential with all data being protected from, above all, the authorities of the asylum seeker's country of origin and/or agent of persecution.<sup>74</sup>

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<sup>74</sup> Paragraph 200 of the UNHCR Handbook provides: '...it is of course, of the utmost importance that the applicant's statements will be treated as confidential and that he be so informed.'

151. The anonymity of the asylum seeker should be maintained during the determination procedure, including any appeal hearing and any determination arising therefrom in accordance with the principle of confidentiality.
152. Any information relating to an asylum seeker should be treated in accordance with the UN Guidelines concerning computerized personal data files<sup>75</sup>, and EC Directive 95/46<sup>76</sup>. Furthermore, all states should ratify and implement the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data<sup>77</sup>.
153. All personal data, including fingerprint information, should be withdrawn from data exchange systems when refugee status or a residence permit is granted, or in other cases after five years.

### *Transparency*

154. The applicant, his/her lawyer and UNHCR/non-governmental representative should be told in clear terms what information formed the basis of the decision relating to the claim of asylum. Files concerning the asylum application should be open to the asylum seeker, his/her lawyer and UNHCR/non-governmental representative at all stages of the asylum procedure.
155. All rules, policies, guidelines and criteria governing claims of asylum should be published and made available in the public domain. Guidelines and policy statements should be regularly reviewed to reflect changes in the law or the facts. UNHCR and non-governmental organisations should be involved in the discussions relating to policy and procedure.
156. European States should make publicly available statistics regarding asylum seekers. Such information should be published periodically and not only as a result of parliamentary questions.
157. All asylum statistics provided by European States should include a breakdown by gender, age and ethnicity in order to highlight the situation of refugee women, children and particular refugee groups for the information of policy makers.
158. European states should also publish and make available in the public domain an annual report providing information relating to the implementation of the asylum procedure, including statistics on costs, personnel, training programmes and underlying problems in the procedure.
159. All proposed agreements deriving from inter-governmental fora which relate to asylum and refugee policy should be subject to parliamentary scrutiny.

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<sup>75</sup> Adopted by the General Assembly on 14 December 1990.

<sup>76</sup> 24 October 1995

<sup>77</sup> 28 January 1981. At the time of writing, it appears that the European Community as such will accede to this Convention.

160. European States should establish a mechanism for judicial control with respect to the interpretation and implementation of inter-governmental treaties such as the Dublin Convention.
161. The Member States of the Dublin Convention should establish greater transparency for non-governmental organisations, lawyers and asylum seekers with regard to the procedures to be adopted and decisions taken under the Dublin Convention.

## SUSPENSION OF ASYLUM PROCEDURES

### *Temporary Protection*<sup>78</sup>

162. Temporary Protection<sup>79</sup> may be used to temporarily suspend refugee status determination while at the same time guaranteeing that all individuals will have access to such determination as soon as possible and certainly prior to return. Temporary protection should only be used in an emergency situation involving the exodus of large group of refugees where individual refugee status determination is not immediately practicable upon arrival and where its application will enhance admission to the territory. The fact that an individual receives Temporary Protection should in no way imply a prognosis about which legal status he or she may or may not be granted at a later stage.
163. In circumstances where a whole group clearly falls within the scope of the 1951 Convention or the provisions of a complementary form of protection, states need not suspend asylum procedures but should instead have recourse to ‘group determination’ of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.<sup>80</sup>

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<sup>78</sup> For a full examination of ECRE’s policy on Temporary Protection, see ‘*Position on Temporary Protection in the context of the Need for a Supplementary Refugee Definition*’, ECRE, March 1997.

<sup>79</sup> The elements of temporary protection are to be found in EXCOM Conclusion No. 19 (XXXI) on Temporary Refuge and Conclusion No. 22 (XXXII) on Protection of Asylum-Seekers in situations of Large-Scale Influx.

<sup>80</sup> See paragraph 44 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. See also above section on individual and group determination.

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