



Discussion Paper on Recommended Reception Standards for Asylum-Seekers in the Context of the Harmonisation of Refugee and Asylum Policies of the European Union

Publisher [UN High Commissioner for Refugees \(UNHCR\)](#)

Publication Date June 2000

Cite as UN High Commissioner for Refugees (UNHCR), *Discussion Paper on Recommended Reception Standards for Asylum-Seekers in the Context of the Harmonisation of Refugee and Asylum Policies of the European Union*, June 2000, available at: <https://www.refworld.org/docid/3ae6b3378.html> [accessed 20 May 2019]

I. INTRODUCTION

A. General Considerations

1. The implementation of the 1951 Convention relating to the Status of Refugees (hereinafter the 1951 Convention) depends in principle upon fair and expeditious asylum procedures.^[1] Unless asylum-seekers are afforded access to asylum procedures, it is impossible for states to know who is a refugee requiring international protection and benefiting from the 1951 Convention.^[2] Reception standards are closely related to the quality of these procedures, and need to be based on the principle that asylum-seekers should enjoy an adequate standard of living^[3] throughout the asylum procedure. It is essential to enable asylum-seekers to sustain themselves during the asylum process, not only out of respect for their rights but also to ensure a fair and effective asylum procedure. Since reception standards can affect eventual integration or return, states consider it to be in their own interest to ensure adequate and humane conditions for asylum-seekers during the procedure.

2. The expression "reception standards" refers to a set of measures related to the treatment of asylum-seekers from the time they make their claims either in-country or at the border, including the airport or sea port, until a final decision is taken as regards their asylum request. These measures range from adequate reception conditions upon arrival at the border, access to legal counselling, freedom of movement, accommodation, and adequate means of subsistence to access to education, medical care and employment. Special arrangements are necessary to cover the specific needs of children, women and elderly asylum-seekers.

3. States have a broad discretion to choose what forms and kinds of support they will offer to asylum-seekers. These may range from "in kind" support, such as accommodation, food and health care, to financial payment or work permits to allow self-sufficiency. Although each state has this broad discretion, it is important that the combined effect of these measures is evaluated to ensure that, at a minimum, the basic dignity and rights of asylum-seekers are protected and that their situation is, in all the circumstances, adequate for the country in which they have sought asylum. Based both on international human rights law, international refugee law standards, and European state practice, which is described in the UNHCR Study on Reception Standards of May 2000, the following general considerations and recommended standards are intended to form the basis of a discussion with the institutions and member states of the European Union (EU) on how best to harmonise standards in this area. Current state practice, as outlined in the aforementioned UNHCR Study, will provide an important yardstick for harmonising refugee and asylum policies in this area, at an adequate level and on the basis of best practices. It should also be noted that the focus of this paper is essentially to set standards in the context of developed asylum systems where the average living standard is high. These standards may not be realisable in many asylum countries in less developed parts of the world and would need to be adapted accordingly.

Personal Scope

4. The term "asylum-seeker" for the purpose of this paper applies to those whose claims to asylum or protection are being considered under an admissibility procedure, as well as to those who are being considered under individual asylum procedures,^[4] whether regular or accelerated. It also includes those exercising their right to seek judicial and/or administrative review of their asylum application.

5. This paper does not cover the situation of persons who benefit from temporary protection. It also does not address the appropriate standard of treatment for beneficiaries of complementary forms of protection.

Temporal Scope

6. This paper covers the period from the time that the asylum-seeker expresses willingness to seek asylum or protection,^[5] until a final decision is taken as regards his or her asylum application, that is, until he or she is granted protection or has been rejected in a final decision. This also covers the period in the context of the application of the Dublin Convention, that is, the period until the decision is taken as to which state is responsible for the examination of the asylum application. In line with the principle of the suspensive effect of the appeal, adequate reception standards require states to arrange for acceptable conditions for the period during which an asylum-seeker awaits the outcome of an appeal lodged against an initial negative decision.^[6]

B. Applicable International Legal Framework

7. States are responsible for respecting and ensuring the human rights of everyone on their territory and within their jurisdiction. International and regional human rights law, as well as applicable refugee protection standards are therefore relevant in the context of defining adequate reception standards for asylum-seekers.^[7]

8. In terms of international human rights law, there is a minimum core content of human rights, which applies to everyone in all situations. Article 25 of the Universal Declaration of Human Rights (UDHR) recognises the right of everyone to a standard of living adequate for the health and well-being of himself or herself and of his or her family, including food, clothing, accommodation and medical care and necessary social services. And more specifically, the International Covenant on Economic, Social and Cultural Rights (ICESCR) spells out basic principles that help set out the framework for reception standards in the area of economic and social rights.^[8] An adequate standard of living includes the provision of food, clothing and accommodation to those asylum-seekers who are unable themselves to secure these.^[9] The International Covenant on Civil and Political Rights (ICCPR) provides standards for the exercise of civil rights, including non-discrimination, protection against arbitrary detention and torture, and the right to recognition everywhere as a person before the law.

9. In Europe, the human rights of asylum-seekers are also protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),^[10] which applies to everyone within the jurisdiction of the contracting states.^[11] Article 6 of the Amsterdam Treaty provides that the ECHR shall guide future community law. In this context, reception measures should, inter alia, be consistent with provisions relating to the prohibition of inhumane or degrading treatment, the right to liberty, the right to privacy and family life, and the right to an effective remedy.^[12]

10. As for the applicability of international refugee law, the 1951 Convention, complemented by the 1967 Protocol, does not explicitly mention asylum-seekers. However, there is nothing in the 1951 Convention, which says that its provisions only apply to recognised refugees. In fact, the 1951 Convention applies in parts before a formal recognition of refugee status otherwise important provisions of the 1951 Convention, notably Article 33 and Article 31, would be rendered meaningless. The 1951 Convention therefore remains an important point of departure for considering certain standards of treatment for the reception of asylum-seekers, not least because asylum-seekers may turn out to be refugees.^[13]

11. A closer examination of the 1951 Convention reveals that the benefits provided under the various provisions of the 1951 Convention have different levels of applicability depending on the nature of the refugee's sojourn or residence in the country. The most fundamental rights (Articles 3 and 33), and some

others [see, for example, Articles 7(1), 8, 13] are extended to all refugees. Other basic rights are applicable to any refugee present "within" the country (for example Articles 2, 4, 20, 22, 27), even illegally (see Article 31). Other provisions apply to refugees "lawfully in" the country (Articles 18, 26 and 32), while certain of the more generous benefits are to be accorded □to refugees lawfully staying [résidant régulièrement] in [the] territory' of the country concerned [Articles 15, 17, 19, 21, 23, 24 and 28; see also Articles 14, 16(2) and 25]. The drafting history shows that the English term □lawfully staying' is based on the French, and that a distinction was intended between basic rights accorded to all refugees (and that would, to some extent at least, include asylum-seekers whose refugee status has not yet been determined) and other rights and benefits accorded to those accepted as legal residents.

12. These gradations in treatment allowed by the 1951 Convention are therefore a useful yardstick in the context of defining reception standards for asylum-seekers, from the perspective of international refugee law. In essence, the 1951 Convention provisions that are not linked to lawful stay or residence would apply to asylum-seekers in so far as they relate to humane treatment and respect for basic rights, including non-refoulement.^[14]

13. The average length of the asylum procedure in the various countries of the European Union is an important element in this discussion. With prolonged periods, the disadvantage for persons with valid claims to refugee status is evident. Should the asylum procedure be unduly prolonged, asylum-seekers should therefore be entitled to a broader range of benefits. Clearly, the need to establish expeditious asylum procedures is paramount because of the hardship protracted periods of uncertainty would cause to asylum-seekers, and to avoid that the standard of treatment foreseen in the 1951 Convention is denied to those who turn out to be refugees. In addition, expeditious procedures decrease the overall costs of the reception system for asylum-seekers by identifying quickly who is in need of international protection and who is not.

C. Guiding principles

14. The principles of non-refoulement and of non-discrimination underpin the design of adequate reception policies. As regards the principle of non-refoulement, there is no doubt that this principle applies to asylum-seekers.^[15] Both at the border and within the territory of the state, asylum-seekers should not be returned to a place where they may risk persecution. Another important foundation of a reception policy is the enjoyment of rights and freedoms free from discrimination. Both the ICCPR and the ICESCR prohibit discrimination on the grounds, *inter alia*, of national origin.^[16] Although neither these provisions, nor the non-discrimination clause of the 1951 Convention,^[17] mention discrimination on the basis of citizenship, ^[18] a differentiation in treatment should not be unreasonable or motivated by prejudice.^[19] Furthermore, it is worth noting that even when a differential treatment between nationals and foreigners may be reasonable and justifiable, states should treat asylum-seekers as a special category of foreigners because of the vulnerability inherent in their situation. Another manifestation of the non-discrimination principle in the context of reception standards is that no distinction should be made between different groups of asylum-seekers, with the exception perhaps of manifestly unfounded asylum applications being processed in accelerated procedures. In such cases, a lower standard of treatment may be justifiable. Non-discrimination also suggests that the same standards should apply irrespective of where an application is lodged.

II. RECOMMENDED RECEPTION STANDARDS

15. The following paragraphs discuss important elements of reception policies and set out in bold recommended reception standards for asylum-seekers. These recommended standards, which are by no means exhaustive, do not focus on procedural aspects. They provide a basic guide for the design of appropriate reception standards consistent with international law and standards, and are based on an analysis of best state practice in this area. The design and implementation of a reception regime depends on a number of factors, including the average length of the procedure and the nature of the asylum application, that is, whether manifestly unfounded or not. A reception regime can follow different models or combine flexibly various elements of these models. As mentioned in paragraph 3 of this paper, an examination of the combined effect of the various measures taken by states in the reception area is essential for evaluating the consistency of reception policies with international law and standards.^[20]

A. Reception on arrival

16. Asylum-seekers often encounter difficulties at the very early stage of the asylum process. They may lack basic information on the asylum procedure and may be unable to state their asylum claims formally or intelligibly without the assistance of a legal counsellor or an interpreter. Victims of torture or those who suffered other traumatising experience usually require immediate medical or psychological assistance. Others may have been unable to obtain identity or travel documentation since the very authorities to which they would need to apply for travel documents may have persecuted them.

17. In some instances, when asylum-seekers reach a border, states retain them in so-called "international zones" or transit zones in order to reject without delay asylum claims considered manifestly unfounded. In these zones, freedom of movement is restricted, and adequate reception facilities, interpretation services, and basic support are often lacking.

18. Some countries detain asylum-seekers systematically during the admissibility procedure, for instance, when there is doubt regarding their identity or if they have no or invalid documentation. Depending on the procedure, applicants sometimes spend an excessively long period in reception centres at the border.

- Reception facilities at borders, including airports, should include all necessary assistance and the provision of basic necessities of life, including food, shelter and basic sanitary and health facilities.[\[21\]](#)

- Even for a short stay, family unity and privacy are essential. Single men and women should be accommodated separately, and families should have the possibility to stay together in the same premises.[\[22\]](#)

B. Information and legal advice

19. Asylum-seekers are usually unaware of administrative procedures of the country where they seek asylum and may therefore not be able to invoke procedural rights correctly. For asylum-seekers applying at entry points, the first interview usually takes place at the airport or at the border zone, and most of the applicants await the decision on the admissibility of their application in that location. Whether asylum-seekers submit their claims after entering the country or immediately upon arrival, they need access to basic information about the asylum procedure, including access to interpretation facilities, as well as basic legal counselling.

- Asylum-seekers should have access to free and independent legal counselling already at the beginning of the asylum procedure to ensure the effectiveness of the protection system.[\[23\]](#)

- Asylum-seekers should be informed in writing and without delay of the practical arrangements for their reception and of other useful information concerning the asylum procedure (interviews, supporting documentation, appeal possibility, access to legal aid, etc.). They should in particular be made aware of how the procedure works and what their rights and obligations are. Information leaflets should be in a language and in terms understandable to asylum-seekers, preferably in their own language.[\[24\]](#) The authorities should share any other relevant information with asylum-seekers.

- Access to trained and qualified interpreters should be provided from the initial stage of the procedure, and interpretation should be free of charge.[\[25\]](#)

- UNHCR and non-governmental organisations working with UNHCR should have free and unhindered access to asylum-seekers at all stages of the procedure, including at the initial admissibility stage. Asylum-seekers should equally be entitled to contact UNHCR.[\[26\]](#)

- When a negative decision has been taken on "safe third country" grounds, the asylum-seeker should be informed of this decision, preferably in his or her own language. He or she should be told why he or she is to be returned to the third country, and be provided with the address and telephone number of UNHCR or a refugee-assisting non-governmental organisation working with UNHCR in that country. The asylum-seeker should receive a statement in the language of the country to which he or she is to be sent. It should clearly explain that the rejection was based on "safe third country" grounds alone, that the asylum claim has not been examined on its own merits, and that the asylum-seeker wishes to apply for asylum in the third country.[\[27\]](#)

C. Training of border officials

20. Decisions taken by border police or immigration officials have crucial consequences for asylum-seekers. This is particularly true for decisions as to whether or not to refer asylum-seekers to the authorities responsible for determining refugee status. Erroneous decisions taken by such officials may result in the asylum-seeker's return to the country of origin, in breach of international and domestic law.

- Officials who come into contact with asylum-seekers should be aware of international and domestic laws relating to asylum-seekers and refugees. They should be trained on how to handle asylum applications, including sensitive ones, such as those based on gender-based persecution or those submitted by minors.[\[28\]](#)
- The role of the border officials should be limited to ensuring unimpeded access of the asylum-seeker to the asylum procedure, and to preventing refoulement. Their role should be strictly confined to understanding and recording the asylum application and transmitting it to the appropriate authority in an expeditious manner. The responsibility for deciding on the merits of a request should exclusively lie with the central authority competent to determine refugee or other protective status.[\[29\]](#)

D. Freedom of movement and Detention

21. Many European countries resort to the detention of asylum-seekers under certain circumstances. The various grounds for detention include pre-admission detention, pre-deportation detention, detention for the purposes of transfer to a safe third country, detention for the purposes of transfer to the responsible state under the Dublin Convention, and criminal detention linked to illegal entry/exit or fraudulent documentation.

22. Several countries have established special holding centres for asylum-seekers.[\[30\]](#) However, many European states may still detain asylum-seekers in prisons or police jails. In such cases, asylum-seekers and aliens are generally subject to the same regime as other prisoners and are not segregated from criminals or other offenders. In addition, detention conditions are often inadequate and not in line with international standards.

23. The systematic detention of asylum-seekers coming directly from the country of origin or an unsafe third country is at variance with Article 31 of the 1951 Convention. According to this provision, detention should not be based upon an asylum-seeker's illegal entry or presence on the territory provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Freedom from arbitrary detention was reaffirmed in the 1999 UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, which also outline that holding asylum-seekers at the airport, in transit zones, or under a strict regime in a reception centre constitutes detention. Similarly, it is also a deprivation of liberty in the sense of Article 5 of the ECHR if the only option for an asylum-seeker at the airport transit zone to leave this limited area is to return to a country where he or she would face a risk of torture.[\[31\]](#)

24. With regard to the enforceability of rights related to freedom of movement, an asylum-seeker has a right to compensation before the European Human Rights Court whenever he or she has been deprived of his or her liberty in breach of Article 5 of the ECHR. Compensation is also possible when the conditions of detention amount to inhuman or degrading treatment in violation of Article 3 of the ECHR, due to overcrowding, inadequate heating, sleeping and toilet facilities, insufficient food, recreation and contact with the outside world.[\[32\]](#)

25. In accordance with Article 31 of the 1951 Convention and UNHCR guidelines on the subject, detention should not be used to deter future asylum-seekers.[\[33\]](#) There may be exceptional grounds for detention as long as this is clearly prescribed by a national law, which is in conformity with general norms and principles of international human rights law.[\[34\]](#)

- As a general principle, asylum-seekers should not be detained. Detention of asylum-seekers may exceptionally be resorted to for the reasons set out in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers as long as this is clearly proscribed by a national law which is in conformity with general norms and principles of international human rights law.[\[35\]](#) In such

cases, it should only be resorted to for a minimal period, and only after full consideration of all possible alternatives (for example, reporting obligations or guarantor requirements).

- Upon detention, asylum-seekers should have the right to be informed of the reasons for detention and of the rights in connection thereto, in a language and in terms, which they understand. They should have access to legal assistance, if necessary. Conditions of detention should be humane with respect shown for the inherent dignity of the person, and they should be prescribed by law. The standards related to conditions of detention, including minimum procedural guarantees, in particular the right to have detention reviewed by an independent body, are elaborated upon in detail in the aforementioned UNHCR Guidelines on Detention.

- UNHCR and non-governmental organisations working with UNHCR should have free and unhindered access to detained asylum-seekers so that they can be properly informed on the procedure and their related rights.

- In accordance with the aforementioned general principle, minors who are asylum-seekers should not be detained.^[36] This principle also applies to unaccompanied minors. Where possible, they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, the competent authorities should make alternative care arrangements, such as residential homes or foster care placements. All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained. If none of the alternatives can be applied and states do detain children, this should be as a measure of last resort, and for the shortest period of time.^[37] More detailed guidance is contained in the UNHCR Guidelines on Detention.

E. Documentation and Temporary Status

26. Pending the outcome of their asylum claim, asylum-seekers need to be assured of some form of legality during their stay in the territory. In many cases, full enjoyment of basic economic and social rights cannot be secured without formal documentation legitimising the asylum-seeker's stay in the country. Executive Committee Conclusion No. 35 recommends that asylum applicants whose asylum applications cannot be decided without delay be provided with provisional documentation sufficient to ensure that they are protected temporarily until a final decision has been taken by the competent authorities with regard to their application.

27. In most states, temporary permits are issued to asylum-seekers once they are admitted to the asylum procedure. In addition to providing basic protection against expulsion and refoulement, a temporary permit is often the pre-condition to being entitled to basic assistance and other benefits.

- Asylum-seekers should be issued temporary permits, which should be valid until the final decision is taken on the asylum application.^[38]

- Female asylum-seekers should have equal rights to obtain temporary permits, independent of their male relatives, and should have the right to have such documentation issued in their own names.

F. Assistance^[39]

28. Article 11(1) of the ICESCR obliges states to provide assistance to those persons who are unable to be self-sufficient. Asylum-seekers are entitled to an adequate standard of living throughout the asylum procedure. Assistance must include, at a minimum, what is necessary not only for survival but also for a life of dignity. Asylum-seekers may still require certain forms of assistance even when accommodation is provided or when they are permitted to work, since employment opportunities may not always be available or sufficient to cover all basic needs.

29. With regard to the non-discrimination principle and to the minimum core rights of the ICESCR, any differential treatment among asylum-seekers is acceptable only when it is based on reasonable grounds.

30. In some countries, asylum-seekers, who fail to comply with rules of the reception system, or who have not submitted their claims immediately upon arrival, are disqualified from public assistance

programmes. Such measures should, however, not affect the ability of asylum-seekers to continue to pursue their asylum claims effectively.

- Needy asylum-seekers should be given all necessary support covering the basic necessities of life, including food, clothing and basic accommodation, throughout the asylum procedure until a final decision is taken on their application. If necessary, this should also apply to asylum-seekers who are permitted to work but are unable to find adequate employment. [\[40\]](#)

- Support should be granted either in kind (food, clothing, pocket money, etc.) or by giving access to the social welfare system, or through a combination of both. Failure to comply with entry formalities should not automatically lead to denying or limiting assistance under the minimum threshold of an adequate standard of living. [\[41\]](#)

- For those cases where removal is permissible under the Dublin Convention, basic assistance should be provided until such removal is effected.

31. The following paragraphs on accommodation and medical care describe some of the more specific assistance areas where states may need to provide the necessary support.

G. Accommodation

32. In most instances, asylum-seekers are destitute. Many depend on the solidarity of friends or relatives who may host them temporarily. Even when they can afford rented or hotel accommodation, owing to language difficulties, hostility of landlords or racial prejudices, asylum-seekers often encounter difficulties when trying to find private accommodation. This proves even more difficult when asylum-seekers are not permitted to work or cannot find employment.

33. While many countries do not have state-run reception centres, others transfer asylum-seekers to reception centres upon arrival. The nature of the asylum procedure determines the duration and conditions of stay in these centres. In some countries, asylum-seekers are given the option between state-run reception centres, hotels or shelters run by non-governmental organisations, or individual solutions.

- When asylum-seekers are in need of accommodation, the primary responsibility lies with states to provide basic accommodation until the end of the procedure. [\[42\]](#)

- Conditions in reception centres or in other types of collective accommodation for asylum-seekers should fulfil minimum standards, including the existence of basic facilities, as well as access to infrastructures with respect to health care and education. [\[43\]](#)

- Reception centres may constitute an acceptable solution for a limited period following arrival or in the case of accelerated procedures for manifestly unfounded applications. However, asylum-seekers should have access to specific accommodation arrangements or receive adequate means of support sufficient to cover basic accommodation and other costs or be allowed to find alternative forms of accommodation, if these centres do not provide privacy or affect family unity or health conditions in the longer term or if the procedure is protracted. [\[44\]](#)

- With a view to preventing acts of racism and xenophobia against asylum-seekers, a reception policy should include appropriate measures to enhance harmonious relationships with the local communities, for instance, by creating awareness of the problems of refugees and designing specifically targeted public information campaigns. [\[45\]](#)

H. Medical Assistance □ Health Care

34. Asylum-seekers may suffer from health problems, including emotional or mental disorders that require prompt professional treatment. [\[46\]](#) When medical examination is not undertaken upon arrival, it is usually done prior to admission to a reception centre following the admissibility stage.

- Asylum-seekers should receive free basic medical care, in case of need, both upon arrival and throughout the asylum procedure.[\[47\]](#)
- Medical examination and psychological counselling should be subject to strict confidentiality requirements, in particular the HIV testing, which should be done only at the request of the asylum-seeker.[\[48\]](#)
- Asylum-seekers in need of urgent treatment due to torture or other severe trauma should receive special assistance, such as at special institutions.[\[49\]](#)
- Psychological care and counselling should be available free of charge to asylum-seekers referred by the medical personnel.[\[50\]](#)
- The relevant authorities and medical personnel should be sensitised and properly trained to deal with patients coming from different cultural backgrounds.

I. Education

35. Following the departure from the country of origin, children asylum-seekers suffer from the forced interruption of their education. In order to restore a semblance of normality, it is essential that children benefit from primary and secondary education of a satisfactory quality. In conformity with international law and standards, which re-affirm the right of every human being to education,[\[51\]](#) EU member states have integrated this basic right into their legislation. In addition, many countries have implemented the standards required in the Convention on the Rights of the Child (CRC)[\[52\]](#) concerning secondary education for all children, regardless of the reason for their stay in the country.[\[53\]](#)

36. Both local integration -- once refugee status is granted -- and reintegration upon return -- if the asylum claim is rejected -- are greatly facilitated when access to education has been made available throughout the asylum procedure.

- Children asylum-seekers have a right to education. Primary education should be compulsory, available and free to all. Given the importance of education, secondary education should also be made available to asylum-seekers.[38](#)

J. Employment

37. The majority of EU countries allow asylum-seekers to work, albeit with restrictions in some cases. Either asylum-seekers have the right to work once their application is admitted to the substantive stage of the asylum procedure,[\[54\]](#) or they are granted access to employment on the basis of individual authorisation.[\[55\]](#) A minimum length of stay is the condition in some countries for granting access to employment.[\[56\]](#)

38. It is widely accepted that dependence on the state is reduced when asylum-seekers are working. Apart from the financial aspect, the right to work is an essential element of human dignity, particularly in case of lengthy stay pending the outcome of the asylum procedure.

- As is already the practice in many countries, asylum-seekers should, preferably, be granted permission to work when the length of the asylum procedure exceeds a certain period or where the "package" of support offered to asylum-seekers requires independent financial self-sufficiency to maintain an adequate standard of living.[\[57\]](#)

K. Family Unity

39. The fundamental importance of the family and its right to be protected is recognised internationally, including through Article 16 of the UDHR. Respect for the principle of family unity is one of the primary means of protecting the refugee family. The importance of respecting family unity, either by maintaining or reuniting the family, is also reflected in Articles 7, 8, 9, 10, 18 and 22 of the CRC, Article 17 of the ICCPR and Article 8 of the ECHR. Slow asylum procedures where family unity is not preserved can have a major and destructive effect on members of the family, particularly children.

- The authorities should take appropriate measures, including tracing activities, within the country of asylum to maintain the unity of the family, and process asylum requests expeditiously in order to ensure that separated families are reunited as quickly as possible once they are recognised as refugees. [\[58\]](#)

L. Groups with Special Needs

Children

40. Children accompanying their parents or caretakers often undergo the same treatment upon arrival as adults, including living in detention or in inappropriate accommodation facilities. Because of their dependence, their vulnerability and their developmental needs, they suffer the hardship inherent in displacement even more acutely.

- When designing and implementing reception policies, states should be guided by the "best interest" principle, as contained in Article 3(1) of the CRC. This may include the appointment of a representative for all child asylum applicants, ensuring that child applications are given special and priority consideration. Further detailed guidance is contained in the UNHCR Guidelines on Protection and Care of Refugee Children. [\[59\]](#)

- Reception standards should address in particular the special educational, medical, psychological, recreational and other special needs of children, in accordance with relevant international human rights law, UNHCR guidelines and Executive Committee Conclusions. [\[60\]](#)

Unaccompanied and Separated Children

41. There are disparities in the treatment of unaccompanied and separated children within EU member states. Unaccompanied and separated children are not always placed in appropriate care-giving relationships, such as foster care at the earliest stage of the procedure and in other cases, they are hosted in special institutions. [\[61\]](#)

42. Several countries have adopted special measures addressing, specifically, the needs of separated children. For example, in Denmark, unaccompanied and separated children under 14 are in principle granted exceptional leave to remain. In the United Kingdom they are exempt from the accelerated procedure, and in Greece they are entitled to immediate medical and social care. In Finland, the child is granted residence status whenever a final decision on the asylum application has not been taken within three months.

- When dealing with a separated or unaccompanied child, asylum authorities should be guided by the 1997 UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum. [\[62\]](#) Unaccompanied and separated children should be placed in appropriate care-giving relationships, such as foster care or special reception centres, at the earliest stage of the procedure. Such care arrangements should be designed to addressing their special protection and assistance needs.

- Tracing activities should be undertaken at a very early stage and in line with Article 3(3) of the European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries. [\[63\]](#)

- A legal representative should be designated for the handling of the social and legal rights of separated children throughout the asylum procedure, and otherwise to ensure that the child's best interests are represented throughout the child's stay in the country. [\[64\]](#)

- Asylum requests of separated and unaccompanied children should receive priority treatment.

- Special attention should be paid to the risk of child trafficking, in particular separated and unaccompanied female asylum-seekers. Special accommodation arrangements, counselling and protection arrangements are necessary for them.

Female asylum-seekers

43. Being outside their own social network, perhaps for the first time in their lives, may make women vulnerable, particularly if they are unaccompanied by family members. This vulnerability requires special attention and treatment. The problems faced by women could range from shortcomings in the actual asylum procedures to poor physical reception conditions. In several instances, problems concerning the physical safety of women have been reported in overcrowded reception centres without minimum privacy. Adequate staff training or psychological, social or medical referrals in order to help women overcome their inhibitions in describing sexual violence they may have suffered is sometimes lacking. When a female asylum-seeker needs medical care, her cultural or social background may necessitate special attention. Lack of knowledge of the language of the asylum country or when a female doctor is not available may, for instance, be a serious cause of distress.

44. Rights of refugee women are recognised in a number of international instruments.^[65] Consistent with these standards, the recognition of female-specific problems in connection with the asylum procedure was spelt out in Executive Conclusions No. 64 and No. 73. Other useful guidance is contained in the UNHCR Guidelines on the Protection of Refugee Women and the UNHCR Guidelines on Sexual Violence.^[66] The following points highlight important elements of reception policies in this area.

- In asylum procedures, gender awareness should be a guiding principle. All officials and staff involved in the initial reception and the determination process should be trained so that they are sensitive to gender issues.
- At the initial stage of the procedure, female asylum-seekers need to be counselled on their rights, including the right to submit an individual application when family members accompany them. As is the case in many countries, female staff using female interpreters should interview women asylum-seekers. To the extent possible, efforts should be made to arrange female staff to carry out the determination of refugee status.
- As for special security needs, separate and safe accommodation for single women upon arrival and both inside and outside reception centres is an important requirement. When asylum-seekers are accommodated in so-called "international zones" at ports and airports, the physical safety and the privacy of women should be ensured.
- When detention is resorted to, privacy and the principle of family unity should be respected. Men and women should not be detained together, except in family situations. Special efforts should be made to avoid the detention of nursing mothers and women in the later stage of pregnancy.
- Medical help for asylum-seekers upon arrival and in reception centres should include counselling on reproductive health matters. As is the norm in many countries, pregnant women should receive the same maternal and child clinic services as nationals.

Elderly Asylum-Seekers

45. Uprooted in the later stage of their lives, elderly asylum-seekers are often destitute and risk neglect and abandonment by family members who are unable to provide care. Separated elderly often cannot count on the traditional support network that was available in the country of origin.

46. Frequently, they lack information about their rights and about facilities available to them. They may, for instance, not be aware that UNHCR, legal support agencies or state-sponsored counsellors are available to assist them upon arrival and throughout the procedure. Even when they know about such services, the elderly may not be mobile or feel confident enough to seek their help. Moreover, important documentation may have been left behind in the country of origin.

47. The vulnerability inherent in advanced age makes prompt access to medical and health care an essential condition for this group. Also, lack of mobility, a sense of isolation and abandonment, as well as chronic dependency are factors, which the host authorities will need to take into account when designing adequate reception policies for this group.

· At the earliest stage of the procedure, efforts should be made to identify elderly asylum-seekers in need of legal advice and interpretation services, as well as social counselling. Tracing activities should also be undertaken at an early stage in case of particular vulnerability.^[67]

· Elderly asylum-seekers have special health and psychological needs.^[68] Care needs to be exercised that they are not segregated from the rest of the asylum-seeker community living in collective accommodation.

III. CONCLUSION

48. Asylum-seekers are entitled to benefit from the protection afforded by various universal and regional human rights instruments, as well as applicable refugee law standards, all of which provide the basic framework for standards and norms of treatment in the area of reception.^[69] It is essential that states ensure that the fundamental rights and basic needs of asylum-seekers are met during the asylum procedure, and in particular that special efforts are made to reduce the length of the procedures. It is hoped that these considerations and recommended standards will assist states in adopting reception standards and practices that are fully consistent with international law and standards.

United Nations High Commissioner for Refugees

June 2000

^[1] See, for example, Executive Committee Conclusion No. 8.

^[2] See Executive Committee Conclusions No. 8, No. 65, No. 71 paragraph (i), No. 74 paragraph (i), and No. 85 paragraph (r).

^[3] See Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

^[4] This includes refugee status determination procedures, as well as other procedures examining the entitlement to other forms of protection.

^[5] Standards applicable to asylum-seekers therefore start to apply at the moment when asylum or protection is sought, and not when a claim is accepted for examination.

^[6] Asylum-seekers whose applications are rejected are persons who, after due consideration of their claims to asylum in fair procedures (satisfactory procedural safeguards, as well as an interpretation of the refugee definition in conformity with UNHCR doctrine), are found not to qualify for refugee status on the basis of the criteria of the 1951 Convention nor otherwise in need of international protection.

^[7] This was reiterated by the Executive Committee in its Conclusion No. 82: "□ the obligation to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments."

^[8] ICESCR General Comment No. 3 (E/C.12/1990/SR) provides a broad definition of minimum standard: "A State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is *prima facie*, failing to discharge its obligations under the Covenant."

^[9] Article 11(1) of the ICESCR guarantees the right to an adequate standard of living.

^[10] See this Convention of 4 November 1950 and its Protocols.

^[11] See Article 1 of the ECHR.

^[12] See Articles 3, 5, 8, and 13 of the ECHR.

[13] See paragraph 28 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, which explains the declaratory nature of recognition of refugee status.

[14] An asylum-seeker can possibly avail himself or herself of the rights contained in Articles 3 (non-discrimination), 4 (religion), 5 (rights granted apart from this Convention), 7 (exemption from reciprocity), 8 (exemption from exceptional measures), 12 (personal status), 16 (access to courts), 20 (rationing), 22 (public education), 31 (refugees unlawfully in the country), and 33 (non-refoulement principle).

[15] See Article 33 of the 1951 Convention; Executive Committee Conclusion No. 6; and Article 14 of the UDHR.

[16] See Article 2(2) of the ICESCR and Article 2(1) of the ICCPR.

[17] See Article 3 of the ICESCR.

[18] See Article 2 of the ICESCR.

[19] With regard to Article 26 of the ICCPR, the Human Rights Committee noted in its General Comment No. 18: "Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such discrimination are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."

[20] For more information concerning actual state practice in the context of the European Union, please see the UNHCR Study on Reception of May 2000. As for procedural aspects of asylum procedures, basic guidance can be found in Executive Committee Conclusions No. 8, No. 15, No. 22, No. 30, No. 58 and No. 82.

[21] With regard to the legal background, see paragraphs 28-31 of this paper. Detention should be avoided. For more information concerning detention, see paragraphs 21-25 of this paper.

[22] More background can be found in paragraphs 21-25 and 39-47 of this paper.

[23] See Executive Committee Conclusion No. 8. In Spain, for instance, asylum-seekers have the right to free legal counselling throughout the asylum procedure.

[24] This is, for example, the case in Germany, Austria and Spain.

[25] In Spain, the asylum law foresees that free interpretation should be provided and that asylum-seekers should be informed of their right to this service. See also the Dutch Aliens law, as well as the practice in Finland.

[26] See Executive Committee Conclusion No. 22.

[27] In Denmark, for instance, such statements are in the language of the receiving country.

[28] Specific training on gender issues is already being carried out in countries, such as Germany, Greece, Ireland and Switzerland. Training regarding child applicants is already taking place, for example, in Ireland and Greece.

[29] Border police in Switzerland, for example, do not interview applicants; they simply transfer them to registration centres.

[30] For example, in Austria, Belgium, Bulgaria, the Czech Republic, Denmark, France, Germany, Greece, Hungary, the Netherlands, Norway, Poland, Slovakia, Spain, Sweden, Switzerland and the UK.

[31] See, in the context of the ECHR, case of *Amuur v. France*, 25 June 1996, www.echr.coe.fr Hudoc REF00000573. In the UN context, see Resolution 1997/50 of the UN Commission on Human Rights and subsequent reports of the UN Working Group on Arbitrary Detention concerning the situation of immigrants and asylum-seekers.

[32] See, in the context of the ECHR, case of Cyprus v. Turkey, applications 6780/74 and 6950/75, the Council of Europe Human Rights Commission's report of 10 July 1976; see also The Greek case, Yearbook 12, 1969.

[33] Guidelines on detention are spelt out in Executive Committee Conclusion No. 44 and No. 85, and in subsequent UNHCR guidelines. UNHCR drew attention to the increasing institutionalisation of the practice of detention in its *Note on Detention of Asylum-Seekers and Refugees* (EC/49/SC/CRP.13) presented to the Standing Committee's 15th meeting, stressing that much remains to be done to improve conditions, to end mixing asylum-seekers with criminal detainees, explore alternatives to detention and alleviate the hardship imposed on families.

[34] See, for example, Executive Committee Conclusion No. 44 and the UNHCR Guidelines on Detention; Article 5 of the ECHR; Resolution 1997/50 of the UN Commission on Human Rights and subsequent reports of the UN Working Group on Arbitrary Detention concerning the situation of immigrants and asylum-seekers.

[35] See Article 9(1) of the ICCPR, Article 37(b) of the CRC and Article 5 of the ECHR.

[36] See Articles 2, 3, 9, 22 and 37 of the CRC, and the UNHCR Guidelines on Detention.

[37] See Article 37 of the CRC.

[38] See Executive Committee Conclusion No. 35, and Article 27 of the 1951 Convention, which requires only simple presence on the territory.

[39] See also paragraphs 3 and 14 of this paper.

[40] See Article 11 of the ICESCR, and in particular, ICESCR General Comment No. 12, contained in document E/C.12/1999/5.

[41] See Article 31 of the 1951 Convention.

[42] See Article 11 of the ICESCR.

[43] See also ICESCR General Comment No. 4 in relation to its Article 11, contained in document E/1992/23.

[44] See Article 17 of the ICCPR.

[45] See also Article 20 of the ICCPR.

[46] See the 1995 UNHCR Guidelines on Preventing and Responding to Sexual Violence against Refugees.

[47] See, for example, Article 25 of the UDHR, Article 12(1) of the ICESCR and Article 24(1) of the CRC, which recognise a right to medical care. Access to health care is granted on the same basis as for nationals in the UK, Ireland, the Netherlands, and Belgium. In these cases, there are no conditions placed on access.

[48] See UNHCR Policy regarding Refugees and Acquired Immune Deficiency Syndrome.

[49] Examples of such special institutions are the Rehabilitation Centre for Torture Victims and Crisis Prevention Centres for Immigrants in Helsinki or specialised centres for psychological treatment of asylum-seekers in Belgium and in the UK. Victims of torture are referred to specialist institutions as a matter of course in Greece (Presidential Decree 61/1999).

[50] Free psychological services are available through the national health system, for example, in Finland, Italy, Luxembourg, the Netherlands, Ireland, Austria (if the asylum-seeker has been granted federal care), and Denmark (once the asylum-seeker has been granted a residence permit).

[51] See Article 26 of the UDHR; Article 2 of Protocol No. 1 to the ECHR: "No person shall be denied the right to education"; Article 13 of the ICESCR; Article 28 of the CRC; and the UNHCR Guidelines on

Protection and Care of Refugee Children; see also ICESCR General Comments No. 11 in document E/C/1999/4, and No. 13 in document E/C.12/1999/10.

[52] See Article 28(1)(b) of the CRC.

[53] In Belgium education is compulsory until 18 and even illegal aliens, such as rejected asylum-seekers, must attend. Free access until 18 is guaranteed in several states, including Luxemburg, Norway, and the UK.

[54] This is, for instance, the case in Belgium.

[55] This is, for example, the case in Greece, Portugal and Spain.

[56] Finland, Sweden, the United Kingdom and Switzerland are relevant examples in this area.

[57] See also Article 6 of the ICESCR.

[58] Apart from the human rights norms mentioned in paragraph 39, further guidance on the protection of the refugee's family is also contained in Executive Committee Conclusions No. 9, No. 24, No. 84, No. 85 and No. 88.

[59] These guidelines were published in 1994.

[60] See the UNHCR Guidelines on Protection and Care of Refugee Children, and Executive Committee Conclusions No. 47, No. 59, and No. 84. See also Articles 3, 7, 22, 24 and 27 of the CRC.

[61] There are specialised reception centres for separated children in, for example, Belgium, Denmark, Finland, Greece, the Netherlands and Spain.

[62] See also the Preamble to the European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, which makes explicit reference to the CRC and the best interest principle as a primary consideration.

[63] See Articles 7 and 22(2) of the CRC, and the UNHCR Guidelines on Protection and Care of Refugee Children.

[64] See Article 3(4) of the European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries. There is automatic appointment of a legal representative in Austria under Article 25 (2) of the Asylum Law. Guardians are also appointed in other countries, such as in Germany, Finland, and Italy.

[65] Apart from the International Bill of Human Rights, there are international instruments relating specifically to women, such as the 1979 Convention on the Elimination of all Forms of Discrimination Against Women and the 1957 Convention on the Nationality of Married Women.

[66] See Executive Committee Conclusions No. 39, No. 54 and No. 60. See also, for example, ECRE 1997 Position on Asylum Seeking and Refugee Women; Australian Department of Immigration and Multicultural Affairs: 1996 Guidelines on Gender Issues for Decisions Makers; Canadian Immigration and Refugee Board: Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

[67] For these and other recommendations in this area, see also UNHCR's Policy on Older Refugees (EC/50/SC/CRP.8, Annex II), as endorsed at the Standing Committee's 17th meeting.

[68] See generally, ICESCR General Comment No. 6 on the economic, social and cultural rights of older persons (E/1996/22).

[69] See in particular the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the European Convention on Human Rights.

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