

# **Model agreement on the sharing of personal data with Governments in the context of hand-over of the refugee status determination process**

## **Agreement on the Sharing of Personal Data Of Refugees and Asylum-seekers**

**Between**

**The Government of {country name}**

**And**

**The Office of the United Nations High Commissioner for Refugees**

### **Preamble**

*[Reaffirming* the commitment of the Government of {country name} to implement its obligations under the Convention relating to the Status of Refugees of 1951, the Protocol relating to the Status of Refugees of 1967 {and applicable regional refugee instruments}]; *if applicable*

*[Considering* {the national law/decreed relating to the status of refugees and asylum-seekers}]; *if applicable*

*Recalling* Conclusion No. 8 (XXVIII) – 1977 on the Determination of Refugee Status of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees.

*Acknowledging* the importance of the development of national asylum legislation and the establishment of processes for status determination, and welcoming the technical and financial support that UNHCR is able to provide as appropriate in line with its mandate;

*Recognizing* that where the Office of the United Nations High Commissioner for Refugees conducts refugee status determination of refugees and asylum-seekers on behalf of the Government, the latter has a legitimate interest in obtaining information about persons on their territory;

*Recognizing* the right of every person to be protected against the arbitrary or unlawful interference with his or her privacy and other fundamental principles for the protection of personal data, especially computerized personal data, including, for example, the principle that computerized personal data shall be obtained and processed only in fair and lawful ways; the principle that the purpose for which computerized personal data is processed shall be specified, legitimate and brought to the attention of the persons concerned; the principle that computerized personal data shall be adequate, relevant and not excessive in relation to the purpose for which it is processed; the principle of individual participation and in particular the right to access and the principle that computerized personal data shall be accurate and, where necessary, kept up to date;

*Recognizing* that the process of refugee status determination should abide by the fundamental principles of confidentiality, and that the systematic sharing, electronically or otherwise, of personal data of refugees and asylum-seekers by the Office of the United Nations High Commissioner for Refugees with States must be subject to data protection safeguards, including the consent of the persons concerned. Sharing personal data should not compromise the Office's humanitarian and non-political character, jeopardize human rights or

undermine the climate of trust and confidence which needs to exist between the Office and persons approaching it for protection and assistance;

*Considering* that the sharing by the Office of the United Nations High Commissioner for Refugees of the personal data of refugees and asylum-seekers with the Government of their host country can significantly enhance the scope of the protection and assistance interventions that the Office is able to make on their behalf, as well as the standard of treatment that the host country is able to accord;

*[Acknowledging and without prejudice to {Accord de Siège between UNHCR and the Government of the host country};] if applicable*

The Government of {country name} and the Office of the United Nations High Commissioner for Refugees agree as follows:

## **Article 1** **Definitions**

For the purpose of this Agreement the following definitions shall apply:

- (a) "Government" means the Government of {country name};
- (b) "UNHCR" means the Office of the United Nations High Commissioner for Refugees;
- (c) "Parties" means UNHCR and the Government;
- (d) "Country" means {country name};
- (e) "Personal data" means any information relating to an identified or identifiable individual;
- (f) "Refugee Status Determination" means the legal and administrative procedure undertaken by States and/or UNHCR to determine whether an individual should be recognized as a refugee in accordance with national and international law.

## **Article 2** **Refugee Status Determination**

1. The Government assumes its responsibility for the individual refugee status determination in accordance with established procedures. A phased hand-over of UNHCR's Mandate refugee status determination activities will be completed by [date       ].
2. In line with its Mandate and subject to the availability of resources, UNHCR will provide the Government with technical and material support in establishing the individual refugee status determination procedure.
3. Individual information collected during UNHCR's Mandate refugee status determination process will be shared with the Government in accordance with Article 3.

## **Article 3** **Sharing of personal data with the Government<sup>1</sup>**

1. UNHCR shall share with the Government the following personal data of each refugee and asylum-seeker registered by UNHCR and whose record status is active:

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<sup>1</sup> When concluding this Agreement, issues of who manages the registration database, who has authority to rectify or erase data, and who has access to the data are crucial. If needed, please seek advice from Headquarters on the details of these arrangements.

- (a) Name;
- (b) Date of arrival in the country;
- (c) Registration date;
- (d) Citizenship / Country of origin / Country of birth; delete whichever is inapplicable
- (e) Place of birth;
- (f) Date of birth;
- (g) Sex;
- (h) Photograph;
- (i) Status under UNHCR's Mandate ("refugee", "asylum-seeker" or "not in need of international protection as a refugee");
- (j) Current address [administrative level 1 or camp level only]; delete if not appropriate

2. In addition to the biodata mentioned in paragraph 1 of this Article, UNHCR may share with the Government edited summaries of the refugee claim containing the grounds for recognition or rejection.

3. UNHCR will make the appropriate arrangements to ensure that all refugees and asylum-seekers are duly informed prior to the refugee status determination process that any of the above information can be shared with the Government.

4. In case refugees and asylum-seekers have not been informed in accordance with paragraph 3 of this Article, UNHCR will make arrangements that they be notified of the sharing of this data. A reasonable time frame will be given within which refugees and asylum-seekers can express their reservations to UNHCR regarding the sharing of their personal data.

#### **Article 4**

##### **Requests for additional sharing of personal data**

1. Requests by the Government for the disclosure by UNHCR of the personal data of any refugee or asylum-seeker beyond that provided for in Article 3 of this Agreement shall be considered by UNHCR on a case-by-case basis, taking into account the Government's legitimate interests in obtaining information about persons on its territory, UNHCR's international protection mandate, fundamental principles for the protection of personal data, the privileges and immunities of the United Nations, and the need to ensure the safety of UNHCR staff and other humanitarian personnel.

2. Requests by UNHCR for the disclosure by the Government of the personal data of any refugee or asylum-seeker shall be considered by the Government on a case-by-case basis, taking into account UNHCR's international protection mandate, the Government's obligations under national and international law – including but not restricted to obligations relating to the protection of personal data – and the need to ensure the safety of Government staff and other personnel.

3. The request must be made in writing and must clearly state the reasons why disclosure is necessary and the purpose for which the data is requested. Consent for disclosure shall be requested as necessary from the person with respect to whom the request relates.

## Article 5

### **Means by which personal data are shared**

1. The Parties shall agree by exchange of letters the standard means to be used for the sharing of personal data under Article 3 of this Agreement. The personal data may be shared in hardcopy and/or electronic format. The electronic format may be a database application, Extensible Markup Language (XML), Portable Document Format (PDF), a spreadsheet, a word-processing document, or any other mutually convenient format agreed by the Parties.
2. The means of sharing personal data under Article 4 of this Agreement shall be determined by the Party from whom the data is requested.

## Article 6

### **Use of personal data**

1. The Government may use the personal data shared in accordance with Article 3 of this Agreement only insofar as is necessary to achieve the following purposes:
  - (a) Identifying persons who are in need of protection as refugees, as well as persons who are not in need, or no longer in need, of international protection;
  - (b) Carrying out national immigration formalities, with due regard to the protection needs of the persons concerned;
  - (c) To ensure respect of the principle of *non-refoulement* and the general treatment of refugees and asylum-seekers in accordance with national and international legal obligations;
  - (d) Issuing personal documents, such as documents necessary to prove identity and refugee status, to obtain access to assistance and services, and/or to exercise basic rights; travel documents; and certification of birth, marriage, divorce and/or death;
  - (e) Facilitating family reunification;
  - (f) Implementing appropriate durable solutions (voluntary repatriation, local integration or resettlement to a third country);
  - (g) Compiling statistical data.
2. The Government shall take all measures to ensure that the data is only processed by authorized personnel and institutions, whose use and access is warranted by the pursuance of above-mentioned purposes.
3. UNHCR may use the personal data of refugees and asylum-seekers only for purposes that are compatible with the Statute of UNHCR, other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs, Article 35 of the Convention relating to the Status of Refugees of 1951, Article 2 of the Protocol relating to the Status of Refugees of 1967 [*and applicable regional refugee instruments*].
4. Any personal data shared in accordance with Article 4 of this Agreement may only be used for the purpose specified at the time of the request or for any of the purposes specified in paragraph 1 of this Article.
5. Personal data shared under this Agreement may not be used by the recipient Party for any purpose other than that specified in paragraphs 1 to 3 of this Article except with the prior

written authorization of the Party that shared it, or, as appropriate, the prior written authorization of the person concerned.

#### **Article 7**

##### **Sharing data with third parties**

1. Under no circumstances shall personal data shared under this Agreement be disclosed to the country of origin of the refugees and asylum-seekers concerned. The only exception to this concerns data processed in the context of a tri-partite agreement for voluntary repatriation under the auspices of UNHCR.
2. Personal data shared under this Agreement may not be disclosed to a third party except for the purposes specified in this Article, and then only insofar as is necessary to achieve said purposes. The third party shall provide appropriate written undertakings in advance that the personal data will not be used or further disclosed for any purpose incompatible with the aims and objectives for which it was disclosed.

#### **Article 8**

##### **Interested person access**

1. Everyone who offers proof of identity shall have the right to know whether their personal data has been shared under Article 3 of this Agreement, and to obtain this data in intelligible form, without undue delay and free of charge. Appropriate rectifications or erasures shall be made in the case of unlawful, unnecessary or inaccurate entries.
2. The same right shall also apply with respect to personal data shared under Article 4 of this Agreement, subject to exceptions necessary to protect the privileges and immunities of the United Nations, UNHCR's legitimate interests, national security, public order, public health or morality, as well as, *inter alia*, the rights and freedoms of others. The Party that shared the data shall be consulted in order to determine whether any such exceptions apply to the personal data at issue, and any such determination made by that Party shall be binding.

#### **Article 9**

##### **Security of personal data**

The Parties shall take appropriate measures to protect the personal data shared under this Agreement against accidental or unauthorized destruction, accidental loss, unauthorized access, use, alteration or dissemination, and against all other unauthorized forms of processing.

#### **Article 10**

##### **Issuance of documentation by UNHCR**

UNHCR may issue documentation to persons whom it has registered certifying that they are refugees or asylum-seekers under UNHCR's mandate. Samples of these documents shall be provided to the Government, which shall distribute them to the country's central and local authorities to ensure that refugees and asylum-seekers are treated in accordance with national and international legal standards.

#### **Article 11**

## Settlement of disputes

Any dispute between UNHCR and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement.

## Article 12

### General provisions

1. This Agreement shall enter into force on the date of its signature by both Parties and shall continue in force until terminated under paragraph 3 of this Article.
2. This Agreement may be modified at any time by mutual written consent.
3. This Agreement shall cease to be in force thirty days after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement, except as regards the normal cessation of the activities of UNHCR in the country. The obligations under Articles 6, 7, and 8 of this Agreement shall not cease with the termination of this Agreement.
4. Nothing in or relating to this Agreement is to be deemed a waiver, express or implied, of any privileges or immunities of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly appointed representatives of UNHCR and the Government, respectively, have on behalf of the parties signed this Agreement, in the English and {*country name*} language(s). For purposes of interpretation and in case of conflict, the English text shall prevail.

Done at {location} this {xx} day of {month} {year}

For the Government of  
{country name}

For the Office of the United Nations  
High Commissioner for Refugees

{name of Government representative}  
{title of Government representative}

{name of UNHCR representative}  
{title of UNHCR representative}