



UNHCR Comments
on
The European Commission Proposal for a Council Directive
laying down Minimum Standards on the Reception of
Applicants for Asylum in Member States (COM (2001) 181 final)

Introduction

1. The reception of persons who may be refugees and their living conditions have a direct bearing on the effectiveness of international protection of refugees. Therefore, UNHCR has, within its mandate of providing international protection to refugees and seeking durable solutions to their problems, a legitimate interest in the standards of treatment that asylum-seekers enjoy from the moment of their arrival in the asylum country until a final decision is taken on their claims.

2. At present, the reception conditions of asylum-seekers in the EU Member States vary significantly from country to country.¹ Even with regard to basic necessities of life, such as a means of subsistence, housing and health care, State practice varies considerably. Some States provide subsistence assistance to all asylum-seekers, others only to those residing in a reception centre and still others provide no assistance at all until the asylum-seeker is admitted to the substantive procedure. Many countries have centralised reception facilities with adequate capacity, but there are also countries where many asylum-seekers do not benefit from any State housing. In some countries, asylum-seekers have access to all basic health care services and psychological care on equal footing with nationals, while in many others access is limited to emergency health care only.

3. In the light of this situation, UNHCR appreciates the serious efforts of the European Commission and the Member States to put in place common minimum standards for the reception of asylum-seekers. The advantages of harmonised reception standards are obvious. Where each State pursues its own reception policies and practices, without co-ordinating with other States, the result may be that the States with the best reception systems could attract a higher share of the number of asylum-seekers. It would not be unreasonable for an asylum-seeker to seek out the most welcoming reception systems. However, reception conditions that respect the dignity and fundamental rights of asylum-seekers are but one factor among many influencing an asylum-seeker's decision about his or her preferred destination country. For instance, a person fleeing persecution may

¹ The findings of a recent UNHCR study on this subject were presented to the European Commission in a report entitled "*Reception Standards for Asylum-seekers in the European Union*," UNHCR, July 2000.

want to apply for asylum in a given jurisdiction not because of its high standards of reception conditions, but because the refugee status determination procedure there is more likely to produce a positive outcome in his or her particular case. In many situations, however, the decisive factor in an asylum-seeker's choice of country of destination remains the connections which the asylum-seeker may have with a particular country, whether through the presence of family members or through linguistic, cultural or historical ties.

4. With the present note, UNHCR seeks to further assist in the development of a fair and effective EU reception policy. UNHCR believes that the emerging common EU policy in this area, for which the draft Council Directive proposed by the Commission provides a solid basis, should be guided by the following basic requirements:

- (i) A reception policy should have as its principal objective humane, rights-respecting treatment that ensures that the life of an asylum-seeker is in all the circumstances one of viability and dignity.
- (ii) The effective operation of a fair and effective reception policy is dependent on a receptive political environment and public opinion conducive to mutual confidence and trust in the asylum system.
- (iii) A reception policy should be organised in relation to the length of the asylum procedures. Where the procedures are unduly prolonged, asylum-seekers should be granted a broader range of social and economic rights and benefits.
- (iv) The effectiveness and adequacy of a reception policy should not be judged solely in relation to the immediate material needs of the asylum-seekers, but also in terms of the real prospects it offers for the future – whether for the integration of those who will be recognised as refugees or the return and re-installation of the unsuccessful ones.
- (v) A fair and effective reception policy should be premised on an understanding that asylum-seekers are capable -- if provided with the requisite tools of language, skills development and employment opportunities -- of assuming responsibility for their own affairs and contributing towards the financial cost of their reception.
- (vi) A fair and effective reception regime must have a correct balance between the rights and benefits granted to asylum-seekers and the obligations and contributions expected of them.

Observations on the Proposed Reception Directive

General remarks

5. UNHCR fully supports the overall thrust of the proposed Directive and welcomes a number of the comprehensive provisions contained therein. The Commission must also be commended for the serious attempt made to strike the proper balance between minimum reception standards that must be embodied in a Community instrument and the latitude left to the Member States as regards the implementation of these standards at the national levels. UNHCR remains committed to working closely with the Member States and the Commission to achieve the proposed Directive's overriding objective, which is to guarantee asylum-seekers with harmonised reception conditions that are "sufficient to ensure them a dignified standard of living" in all EU Member States.

6. UNHCR welcomes the general provisions on reception conditions that the Member States are required to apply in all cases and at all stages of the asylum procedure. These include the obligation to provide asylum-seekers with information and documentation, emergency health and psychological care, material reception conditions that ensure a standard of living adequate for their health and well-being and access to education for children. UNHCR also welcomes the specific provisions for asylum-seekers with special needs, such as unaccompanied minors, disabled persons, the elderly, pregnant women and victims of torture, sexual abuse or other gender-related violence.

7. Furthermore, UNHCR welcomes the link made in the proposed Directive between reception conditions and the length of the asylum procedures, in order to take account of the needs, hopes, aspirations and potential of asylum-seekers that change over time. Clearly, the inter-linkages between reception conditions and asylum procedures consist of more than the time factor. An adequate standard of reception enables asylum-seekers to present their asylum claims properly and sufficiently, to co-operate with the asylum authorities throughout the procedure and, more generally, to build trust and confidence in the asylum process. In turn, fair and expeditious procedures that quickly and properly identify who is in need of international protection and who is not help reduce the financial costs attached to the implementation of reception schemes. As well, the greater the public confidence in the efficiency and effectiveness of the asylum procedures, the better the chances for strengthened community relations.

8. Likewise, the attention given in the proposed Directive to the need to promote harmonious relationships between asylum-seekers and the local communities receiving them has the strong support of UNHCR. As the Commission put it, "...the political and social perception of asylum-related

issues by public opinion in general and by local communities in particular plays a major role in the quality of life of applicants for asylum.”² As a contribution to the achievement of this aim UNHCR plans, resources permitting, to carry out in the immediate future a comprehensive study on the relationship between the reception and integration policies of EU Member States and the perceptions and attitudes of host societies.

9. The provisions on reduction or withdrawal of reception assistance as punishment for “negative behaviour” are probably the most problematic aspects of the proposed Directive. It is well-established that every applicant for asylum has duties to the country in which he or she seeks asylum, which require in particular that the applicant conform to its laws and regulations as well as to measures taken for the maintenance of public order. Where an applicant has been found guilty of acts contrary to the laws and regulations of the State in which he or she seeks asylum, he or she should be subject to the same penalties prescribed for nationals of that country.

Comments in detail

10. As noted above, most of the provisions contained in the proposed Directive are in line with UNHCR’s recommended standards as set out in its July 2000 publication, “*Reception Standards for Asylum-seekers in the European Union.*” UNHCR trusts that these provisions will be retained during the negotiations in Council. The paragraphs that follow will present UNHCR’s observations on those few aspects of the proposed Directive that the Office believes would require clarification or amendment. For ease of reference, these observations follow the actual structure of the proposed Directive.

Article 3: Scope

11. Article 3 of the proposed Directive provides for only a non-mandatory application of the Directive to persons seeking the protection of a Member State on grounds not related to the 1951 Convention. In UNHCR’s view, Member States should be required, as a matter of Community law, to ensure minimum standards of reception for all asylum-seekers, whether or not their protection claims are based on the 1951 Convention. The question of what basic rights and benefits asylum-seekers deserve in order to live in dignity while they are awaiting the determination of their protection claims should be based on their needs rather than on the grounds on which their claims are based.

² See Explanatory Memorandum to the proposed Directive, p. 5.

Article 6: Documentation

12. UNHCR welcomes the provision of Article 6, which seeks to ensure that applicants for asylum are provided with documentation certifying their status. Whether such documentation should also include information on the holder's entitlement to the rights and benefits set out in the proposed Directive is left to the discretion of the Member States. If such information is lacking, neither the asylum-seekers nor the service providers may be fully aware of these rights and benefits. It may be desirable, therefore, if the inclusion of this information in the documentation provided to applicants for asylum is also made mandatory.

Article 7: Freedom of Movement

13. Article 7(1) allows Member States to limit the freedom of movement of asylum-seekers to a specific area of their national territory, if this is necessary for implementing the Directive or in order to enable applications for asylum to be processed swiftly. It may be useful if the Directive could go one step further and set the following factors for Member States to take into account when choosing the locale where applicants have to reside during the asylum procedure:

- (i) the presence of refugee-assisting NGOs, legal aid providers, language training facilities and, where possible, established community of the asylum-seekers' national or ethnic group;
- (ii) the possibilities for harmonious relations between the asylum-seekers and the receiving communities;
- (iii) the need for supplementary financial support to cover the cost which the asylum-seekers will incur when they have to travel for the reasons set out in Article 7(4);

14. Article 7(2) enshrines the general rule that detention of asylum-seekers should normally be avoided, save for certain exceptional situations set out in the draft *Directive regarding minimum standards on procedures in Member States for granting and withdrawing refugee status*. However, neither the asylum procedures draft Directive nor the present proposal deal with the procedural guarantees for detained asylum-seekers, or with the conditions of their detention. To address these shortcomings, there is no, in UNHCR's view, more appropriate instrument under Article 63 of the Amsterdam Treaty than the proposed Directive on reception standards. The provisions contained in the attached extracts from the UNHCR *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-seekers* could usefully be incorporated into Article 7 or, if this proves unfeasible, set out as an annex to the proposed Directive.

Article 9: Families

15. UNHCR welcomes the provision of Article 9, which calls for appropriate measures to maintain the unity of the family. However, UNHCR notes with concern that Article 9, when seen together with Articles 2(d)³ and 2(e),⁴ would exclude from its scope applicants for asylum who may form a family in the Member State where they seek asylum, or those who may have family members with lawful residence in that Member State on non-asylum grounds.

Article 11: Medical screening

16. UNHCR would urge that Article 11 be amended to stipulate that any HIV testing will only be carried out at the express request, or the consent, of the applicant for asylum. UNHCR, like WHO and UNAIDS, strictly opposes mandatory HIV testing of refugees and asylum-seekers because of the risk of indirect violation of human rights through discriminatory consequences for individuals who test positive for HIV.⁵

Article 13: Employment

17. UNHCR welcomes the flexible approach to employment, whereby Article 13 sets six months from the date of filing an asylum application as the maximum period beyond which a ban on access to the labour market must not extend. Member States have thus broad latitude to allow asylum-seekers to undertake gainful employment at the earliest possible stage based on the economics of demand and supply. The earlier asylum-seekers have access to the labour market, the quicker they become independent of State welfare and lead an autonomous life.⁶

³ Article 2(d) defines “family members” only in terms of the family that already existed in the country of origin.

⁴ Article 2(e) defines “accompanying family members” to mean “the family members of the applicant who are present in the same Member State in relation to the application for asylum.”

⁵ See UNHCR Policy regarding Refugees and Acquired Immune Deficiency Syndrome (AIDS), Geneva, December 1998; and Inter-Agency Field Manual on Reproductive Health in Refugee Situations, Geneva, 1999. The opposition to mandatory HIV screening of refugees and asylum-seekers takes as its point of departure that refugees and asylum-seekers are not an “at-risk” group for infection with the AIDS viruses and that they should therefore not be the object of specific measures unless these are applied to all citizens and foreign residents of the country concerned.

⁶ On the issue of “negative behaviour” as grounds for excluding an asylum-seeker from access to the labour market, please see UNHCR’s comments on Article 22.

Article 14: Vocational training

18. Under Article 14, asylum-seekers may be barred from gaining access to vocational training for a maximum period of six months following the submission of their asylum claims. If asylum-seekers are allowed to work after a maximum waiting period of six months, it may be necessary to help them acquire new, employable skills or strengthen and perfect the ones they already have. Thus, early access to vocational training may be a necessary step in maximizing the prospects of employment. UNHCR would therefore recommend that asylum-seekers be granted access to vocational training once they enter the substantive asylum procedure so that they have better prospects of finding a job as soon as they are given the permission to work.

Article 16: Housing

19. UNHCR welcomes the mandatory provision of Article 16 on the housing of asylum-seekers and their accompanying family members. The provision prescribes four types of housing arrangements from which the Member States can choose. Whatever the form of housing chosen, it must, according to the general rule set out in Article 15(2), “ensure a standard of living adequate for the health and the well-being of applicants and their accompanying family members as well as the protection of their fundamental rights.” In the light of this objective, Article 16 could usefully be strengthened in three areas.

20. Firstly, it would be desirable if the stay of an asylum-seeker in a collective accommodation centre is for the shortest possible duration. Housing asylum-seekers in collective centres during the initial months following their arrival has the advantage that it facilitates efficient dissemination of information and the provision of advice and guidance. At later stages, when the need for information and advice has alleviated, private accommodation is often more suitable. The longer people stay in collective centres, the greater the dangers of marginalisation.

21. Secondly, asylum-seekers who have the opportunity to stay with relatives or friends should not be compelled to live in collective accommodation centres. They should, instead, be provided with a financial allowance that enables them to contribute to the shared rental and/or maintenance costs.

22. Thirdly, the minimum common standards that the housing which the Member States make available to asylum-seekers, whether in collective or private accommodation, may usefully include the following additional requirements:

- (i) Where practicable, the delivery of basic services to asylum-seekers should not be self-contained, but integrated into existing community services. This should be supplemented, as required, by targeted support structures that address the special needs of asylum-seekers (e.g. language training, orientation and cultural awareness programmes, social and legal counselling, community development, etc.)
- (ii) As soon as unsuccessful asylum-seekers are served with deportation orders, they should be transferred to a different housing facility. There are at least two good reasons for this. Firstly, deportation practices are at times accompanied by serious disturbances and traumatic experiences which could affect the other residents of the accommodation centres. Secondly, deportation proceedings may involve visits to the accommodation centres by government officials from the countries of origin of the unsuccessful asylum-seekers for the purposes of identification and travel documentation.

Article 17: Total amount of allowances and vouchers

23. Article 17 sets out the means for achieving the aim of the proposed Directive embodied in Article 15(2): that asylum-seekers must be ensured a standard of living adequate for their health and well-being, as well as for the protection of their fundamental rights. While welcoming this important objective, UNHCR must, however, express reservations as regards the voucher system that the proposed Directive seeks to legislate as one of the forms by which Member States would ensure the material reception conditions of asylum-seekers. The evidence suggests that in some Member States there are particular societal sensitivities to the reality of shopping with vouchers that may lead to prejudices and discrimination against asylum-seekers.

24. UNHCR is also of the view that Article 17 could be improved by setting a more objective parameter as to what level of material support would ensure asylum-seekers “a dignified standard of living and comparable living conditions in all Member States.”⁷ Rather than calling on Member States not to let asylum-seekers “fall into poverty,”⁸ Article 17 could usefully make express reference to the level of national welfare systems as the common yardstick for determining the value of reception support. This would also ensure that whenever national welfare levels are increased as a function of increases in living costs, the same applies to asylum-seekers.

⁷ Paragraph 6 of the Preamble.

⁸ Article 17(1).

Articles 20 and 21: Health and psychological care

25. The proposed Directive makes the nature of health care provided to asylum-seekers dependent on the type of asylum procedures they are consigned to. Asylum-seekers in the regular procedure have access to primary health care provided by a general practitioner and to psychological care, whilst those in admissibility and accelerated procedures only benefit from emergency health and psychological care. UNHCR is of the view that all applicants for asylum should, in principle, receive equal treatment as regards access to health care. On a different, but related, issue, UNHCR would recommend that the financial contributions expected from resourceful asylum-seekers to cover the cost of their health and psychological care under Articles 20(4) and 21(6) should be set at the same level as nationals.

Article 22: Reduction and withdrawal of reception conditions

26. Article 22 of the proposed Directive provides for a reduction or withdrawal of reception support in the case of applicants for asylum who manifest “negative behaviour.” The situations warranting a finding of “negative behaviour” under Article 22 include the following: disappearance of the asylum-seeker; non-compliance with reporting duties; failure to provide information relating to his or her asylum claim; failure to appear for personal interviews relating to the asylum claim; withdrawal of the asylum application; concealment of own financial resources; threat to national security; possible exclusion from refugee status by virtue of Article 1F of the 1951 Convention; manifestation of violent or threatening behaviour towards the management or residents of accommodation centres; non-compliance with residence requirements; and preventing children under one’s care from attending school.

27. UNHCR fully appreciates that Governments and communities have, as a matter of course, legitimate interests to ensure that their hospitality and generosity are not exploited. Where there are problems of real abuse of States’ asylum systems by way of, for example, deliberate non-cooperation on the part of the asylum-seeker in facilitating an expeditious determination of his or her asylum claim, these can and should find their effective redress within established asylum procedures. Likewise, if an applicant for asylum has withdrawn his or her asylum application or has disappeared and thus not presented himself or herself to the refugee status determination authorities within an established time-frame, it is up to those authorities to discontinue the asylum application. Once such persons are removed from the asylum procedure because they have shown no interest to pursue their applications, they are no longer considered as asylum-seekers and have no legitimate claims to the benefits of the State’s reception system for asylum-seekers.

28. As regards the exclusion clauses of Article 1(F) of the 1951 Convention, the competence to decide whether any of these clauses are applicable falls on the refugee status determination authorities. If these authorities have established that there are serious reasons for considering that an applicant has committed one of the acts described in Article 1(F) of the Convention, the person is not considered to be deserving of international protection and is excluded from refugee status. Only then can the person be denied reception support.

29. When it comes to the other types of “negative behaviour” that are not related to the processing of asylum claims, such as inappropriate conduct at accommodation centres or the withholding of children from school, asylum-seekers should be subject to the same measures as similarly situated nationals and legally resident immigrants.

Conclusion

30. The adoption of a Community instrument on minimum standards on the reception of asylum-seekers will be a major step towards the development of a Common European Asylum System. With equitable and adequate living conditions of asylum-seekers throughout the European Union, the operation of Community standards in other areas of asylum may become more effective. Only when asylum-seekers do not have to worry about their basic necessities of life, can asylum procedures be conducted in a meaningful way.

31. The draft Council Directive proposed by the Commission addresses the reception of asylum-seekers in a comprehensive manner. UNHCR welcomes almost all of the provisions contained therein and hopes that they will be retained in the final text. In a few areas, UNHCR has called for clarification or amendment in order to ensure their full conformity with established standards of refugee protection and human rights, as well as the realisation of the fundamental aims of the proposed Directive. It is in the spirit of its ongoing, close co-operation with the Commission and Member States that UNHCR has offered the foregoing observations and suggestions.

***UNHCR Geneva
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**Extracts from the UNHCR Guidelines on
Applicable Criteria and Standards relating to the
Detention of Asylum Seekers, February 1999**

I. General principles

- (i) Alternatives to the detention of an asylum-seeker until his or her refugee status is determined should be considered first in each individual case.
- (ii) Asylum-seeking children under the age of 18 years should not be detained; if their detention cannot be avoided as a measure of last resort it should be for the shortest period of time.
- (iii) As a general rule, the detention of pregnant women in their final months and of nursing mothers should be avoided.
- (iv) Asylum-seekers who have suffered torture or trauma, those with a mental or physical disability and elderly asylum-seekers should not be detained without the certification of a qualified medical practitioner that detention will not adversely affect their health and well-being.

II. Minimum procedural guarantees for asylum-seekers in detention

- (i) To receive, in a language and in terms they understand, prompt and full communication of any order of detention, together with the reasons for the order and their rights in connection with the order.
- (ii) To be informed of the right to legal counsel and, where possible, to receive free legal assistance.
- (iii) To have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities, followed by regular periodic reviews of the necessity for the continuation of detention.
- (iv) To challenge at the review hearing, either personally or through a representative, the necessity of the deprivation of liberty and to rebut any findings made.
- (v) To be able to pursue their application for asylum without any obstacle caused by their detention.

III. Conditions of detention

- (i) In all circumstances, conditions of detention of asylum-seekers should be humane with full respect shown for the inherent dignity of the person; conditions of detention have to be prescribed by national law.
- (ii) There should be, at the outset of detention, initial screening to identify any victims of torture or traumatised persons.
- (iii) Asylum-seekers should not be detained in prisons; if there is no alternative, they should be accommodated separately from convicted criminals.
- (iv) Detained female asylum-seekers should be accommodated separately from male asylum-seekers, unless they are close family relatives.
- (v) Detained asylum-seekers should have the opportunity to make regular contact with, and receive visits in private from, friends, relatives, UNHCR and refugee-assisting NGOs.
- (vi) They should receive appropriate medical treatment and psychological counselling where needed.
- (vii) They should have the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities.
- (viii) They should have the opportunity to continue further education or vocational training.
- (ix) They should be able to exercise their religion and to receive a diet in keeping with their religion.
- (x) They should have access to basic necessities of life, such as beds, shower facilities, toiletries, etc.
- (xi) They should have access to a complaints mechanism; the procedures that need to be followed in lodging complaints should be made available to detainees in a language they understand.