



Peace Institute

Institute for Contemporary Social and Political Studies

BORDER MONITORING METHODOLOGIES

Stakeholders' Manual for Establishing a Border Monitoring Mechanism

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TABLE OF CONTENTS

INTRODUCTION	3
Chapter 1: INTERNATIONAL PROTECTION AND THE EU LEGISLATION IN CONTEXT OF BORDER MONITORING	5
1. Basics on International Protection.....	7
2. Legal Framework of International Protection.....	8
3. Basic Principles of International Refugee Law as set in the 1951 Convention	11
4. Procedural Requirements	12
5. Basics on the Common European Asylum System	13
6. Legal Framework	14
7. Border Monitoring and its Legal Basis.....	15
Chapter 2: BORDER PROCEDURES WITH VULNERABLE GROUPS OF ASYLUM SEEKERS	19
1. Introduction	21
2. Refugee Women.....	22
3. Children and Adolescents	24
4. Conclusion	32
Chapter 3: VICTIMS OF TRAFFICKING – HOW TO RECOGNIZE THEM?	33
1. Introduction	35
2. Who can become a Victim of Trafficking in Human Beings?	37
3. Intensive Feelings of Victims of Trafficking of Human Beings	39
4. Expression of Abuse of Power and Control in a Situation of Trafficking	40
5. Good Practice Principles of Work with Survivors of Trafficking	43
Chapter 4: BORDER MONITORING METHODOLOGIES	45
1. Introduction	47
2. What is monitoring?	47
3. Why monitoring?	48
4. Fundamental principles and standards of monitoring.....	49
5. Subject and issues of monitoring	50
6. Monitoring Planning	53
6.1. Basic conditions	56
6.2. Networking	57
7. Monitoring Programme and Execution	58
8. Monitoring as a Starting Point for Other Activities	59
Appendix 1:.....	62
Appendix 2:.....	64
Chapter 5: EXAMPLE OF A GOOD PRACTICE: SLOVENE AND OTHER POSSIBLE MODELS	65
I. Slovene Model	67
1. Purpose of Border Monitoring	67
2. Legal Framework	67
3. Examples of a Good Practice in the Republic of Slovenia.....	69
II. Other possible models	73
1. “Söderköping Process”	73
2. Future Perspectives	76
Sources:	77

INTRODUCTION

When discussing border monitoring people usually do not ask about details, methodologies, practices or other specific information. On the contrary, the first question would usually be: border monitoring – what is that anyway? Monitoring in its usual meaning has a long tradition with regard to monitoring the conditions in jails, prisons, detention centres and other facilities where freedom of movement of people is restricted. In the recent years when asylum and migration issues have been put on the agenda of the European Union and when the countries started to pay specific attention to migration management, the monitoring activities, usually performed by the NGOs (but also by independent state bodies such as Ombudsman's offices) have been extended to places where the authorities come in contact with migrants: the border. **Border monitoring is therefore an organized and systematic activity aimed at observing and documenting the procedures with foreigners and potential asylum seekers at the borders and in all other facilities that are related with the border (police stations, detention centres for aliens, etc.).**

The reasons why border monitoring is useful for any country are similar as with other monitoring activities: to ensure access to justice which in case of asylum means access to asylum procedure (to have the possibility to exercise the right to apply for asylum), to ensure the respect of migrants' and potential asylum seekers' basic human rights (prevention of torture or inhuman and degrading treatment or punishment, the right to food, water, clothes, etc.), and to ensure that border procedures are conducted in accordance with the law. Consequently, the aim and result of the border monitoring activity is to increase openness of the police (as well as other state bodies) towards the civil society and to increase the level of trust between the police and NGOs. **Such activities also increase the trust in the rule of law by those groups that would otherwise be most vulnerable and exposed to mistreatment: foreigners who do not speak the language, do not know the legal system and have no social network in the country to ask for assistance if they are in trouble.**

The purpose of this manual is to offer all the necessary information to stakeholders who might take part in border monitoring activities – mostly non-governmental organizations but also police and other state officials. Chapter 1 of the manual describes the international legal basis for border monitoring procedures. Chapters 2 and 3 focus on vulnerable groups (children, women and victims of trafficking that need special attention and treatment within the border and asylum procedures). Chapter 4 as a key part of the manual elaborates on the methodologies of the border monitoring mechanisms and answers questions such as how to introduce it, what conditions must an organization fulfil to be able to carry it out, what rules must it follow and what exactly it is that needs to be monitored. Chapter 5 describes the on-going border monitoring mechanism in Slovenia, presents current developments and challenges, and offers an insight into other border monitoring projects that have been implemented across Europe. **We hope that the manual will be useful for those who already plan to establish similar mechanisms, and that it will encourage others to undertake such projects.**

mag. Neža Kogovšek, LL.M., editor

Chapter I:

**INTERNATIONAL PROTECTION AND THE EU
LEGISLATION IN CONTEXT OF BORDER MONITORING**

By Vita Habjan

1. Basics on International Protection¹

1.1. Before the Birth of the United Nations – International Refugee Organisation

During the aftermath of World War I, when the Russian Revolution and the collapse of the Ottoman Empire produced mass movements of people in Europe and Asia Minor, an awareness of the responsibility of the international community – rather than individual governments or private charitable organisations – to provide refugees with protection and find solutions to their problems was raised. At that time, under the League of Nations, refugees were defined as specific groups of people who were considered to be in danger if they returned to their home countries.

The League's first action on behalf of refugees took place in 1921, when Fridtjof Nansen was elected to the position of High Commissioner for Russian Refugees. His tasks were to define their legal status, to organise their repatriation or "allocation" to countries able to receive them, and to undertake relief work with an aid of "philanthropic agencies". During the years that followed the list of national categories in need of protection (Turks, Austrian and German Jews, etc.) was extended, and questions of identity papers and travel documents, regularisation of their personal status, access to employment and protection against expulsion arose. A necessity to extend the mandate of a High Commissioner for Russian Refugees to other categories of refugees became obvious, so in 1933 a High Commissioner for Refugees coming from Germany was appointed, following Hitler's rise to power. From 1938 to 1946, the League of Nations appointed a High Commissioner for Refugees, amalgamating both bodies. At that time there were also a number of ad hoc arrangements and conventions adopted relating to specific categories of refugees.

1.2. Birth of the United Nations – International Refugee Organisation (IRO)

At the first session of the General Assembly in 1946, the refugee problem was included as a priority item on the agenda. The following principles were identified:

- the refugee problem was international in scope and character;
- no refugees or displaced persons who had finally, and in complete freedom, expressed valid objections to returning to their country of origin should be compelled to return;
- the future of such refugees and displaced persons should be the concern of an international body to be established; and
- the main task was to encourage and assist in any way possible their early return to their countries.

The IRO was created in 1947, as a specialised agency of the United Nations, to deal with the residual problem of refugees left after World War II (WWII). It was the first international agency to deal comprehensively with every aspect of the refugee

¹ For the purpose of preparation of this chapter, the following documents and materials have been used: UHCR Tool Boxes on EU Asylum Matters, UNHCR Guidelines, relating legal documents.

situation: registration, determination of status, repatriation and resettlement. The IRO also developed basic standards for dealing with large-scale migration, and showed what could be achieved through a co-ordinated effort within the framework of an international agency. It also specified certain categories of refugees to be assisted, but they were no longer consisted exclusively of national groups.

In 1951, the IRO was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR).

2. Legal Framework of International Protection

States are responsible for protection of their citizens. If the states are unable or unwilling to protect the individuals, and they face such severe violations of their basic human rights and freedoms that they are forced to leave their homes and families in order to seek protection in other countries, these countries are obliged to accept them. **This responsibility of countries derives from the following key legal documents:**

2.1. The 1951 Convention Relating to the Status of Refugees

UNHCR's mandate is to protect refugees and to introduce sustainable solutions for their problems. Its activities are based on international law and standards, which also include the 1948 Universal Declaration of Human Rights, four 1949 Geneva Conventions on international humanitarian law, as well as several other international and regional treaties and binding and nonbinding declarations which deal with refugees' needs.

The foundations of the international refugee law were set with the **1951 Convention relating to the Status of Refugees (Geneva Convention)**. It defines the meaning of a "refugee" and sets minimal standards for consideration of persons who are entitled to the refugee status. Because the Convention was drawn up in the aftermath of the WWII, the term "refugee" focused only on persons outside their countries of origin due to the events that happened in Europe and outside Europe before January 1, 1951. When in late 1950s and early 1960s new refugee crises arose, the term required extension in time and geographical dimension of the Convention which resulted in the **1967 Protocol relating to the Status of Refugees (New York Protocol)** drawn up to the Convention.

Article I (A) of the Geneva Convention sets out the definition of a refugee – **INCLUSION CLAUSE:**

- Article I A(1) concerns "statutory refugees" – persons considered to be refugees under the provisions of international instruments preceding the Convention;
- Article I A(2) includes the general definition of a refugee, which applies to any person who:

“...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence (as a result of such events), is unable or, owing to such fear, is unwilling to return to it.”

The definition sets out four basic criteria to be fulfilled to be granted a refugee status:

- the applicants must be outside his/her country of origin,
- he/she must have a well-founded fear,
- the fear must relate to persecution, and
- the fear of persecution must be based on one or more of five grounds (race, religion, nationality, membership of a particular social group, or political opinion).

EXCLUSION CLAUSES: Exclusion clauses stipulate that the convention shall not apply to persons who meet the inclusion criteria, but who do not need or deserve protection. This would apply to persons:

- receiving protection or assistance from organs or agencies of the United Nations, other than UNHCR (Article 1D),
- benefiting from the same rights and obligations as nationals of the country in which he or she has taken residence (Article 1E), or
- who have committed a crime against peace, a war crime, or a crime against humanity; a serious common law crime prior to admission to the country of asylum; or an act contrary to the purposes and principles of the United Nations (Article 1F).

CESSATION CLAUSES: Cessation clauses stipulate that a person shall no longer be considered as a refugee where, for example, there has been a fundamental change of political circumstances in the country of origin, enabling the claimant to take up renewed residence there, or where the claimant has voluntarily re-availed himself/herself of the protection of the country of origin or a new country.

The exclusion clauses are applied during the refugee status determination (RSD) procedure, after establishing whether a person is a refugee and should be granted a refugee status, while the cessation clauses are generally applied after the person has been recognised as a refugee.

RIGHTS AND OBLIGATIONS UNDER THE CONVENTION:

- non-refoulement (Article 33),
- expulsion (Article 32),
- punishment for illegal entry or presence (Article 31),
- exceptional and provisional measures (Articles 8 and 9),
- requirement of cooperation of States with UNHCR in the exercise of its functions and to facilitate the task of supervising the application of the Convention,
- juridical status of refugees,
- employment and welfare,
- identity and travel documents,
- naturalisation, other administrative matters.

2.2. 1967 Protocol Relating to the Status of Refugees

The Geneva Convention concerns persons who were refugees because of events occurring before 1951. The years that followed showed that the movement of refugees was not a phenomenon that was confined to WWII and its aftermath. New refugee groups emerged, especially in Africa. It therefore became necessary to make the Convention applicable in all such new refugee situations. For this purpose, the 1951 dateline was removed by the 1967 Protocol, giving the Convention a truly universal character.

The Protocol is an independent instrument to which States may accede without becoming parties to the Convention. States which accede to the Protocol undertake to apply the provisions of the Convention to refugees who meet the Convention definition, but without the 1951 dateline.

2.3. Regional Refugee Instruments

➤ Africa:

- The Organization of African Union's Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted in 1969, is important because it broadened the refugee definition.

➤ Europe:

Council of Europe:

- Agreement on the Abolition of Visas for Refugees (1959),
- Agreement on the Transfer of Responsibility for Refugees (1980),
- Resolution on Asylum to Persons in Danger of Persecution (1967),
- Recommendation on the Harmonisation of National Procedures Relating to Asylum (1981),
- Recommendation on the Protection of Persons not Formally Recognised as Refugees under the 1951 Convention (1984).

European Union:²

- Regulation No. 1408/71 on Social Security of Migrant Workers,
- Dublin Regulation, which lays down criteria for determining which Member State is responsible for examining an asylum request when the applicant has passed through one or more Member States of the Community (2003), which replaced the Dublin Convention (1990),
- Schengen Agreement – abolition of frontier controls between countries of the Community (1990).

➤ Latin America:

- Cartagena Declaration (1984).

² Please note that these are only those EU documents that concern border monitoring. In addition to these there were other EU documents adopted related to asylum law which do not concern border monitoring, e.g. Procedural directive (2005/85/EC), Directive on Reception Conditions (2003/9/EC), Qualification Directive (2004/83/EC), Directive on Mass Influx (2001/55/EC) and Family Reunification Directive (2003/86/EC).

- Asia:
 - Bangkok Principles – the Principles Concerning the Status and Treatment of Refugees (1966).

3. Basic Principles of International Refugee Law as set in the 1951 Convention

3.1. Principle of Non-Refoulement

The principle of non-refoulement is a cornerstone of the international system for the protection of refugees. The principle, as set in Article 33 of the Convention, **prohibits States-Parties to the Geneva Convention from directly or indirectly returning a refugee to a country where he/she faces a threat to life or freedom.** This principle applies at all times, within, outside and at the border of the national territory and it applies to recognised refugees as well as to asylum seekers. Therefore, asylum seekers at the border should be granted admission and access to asylum procedure in order to avoid possible breach of the principle of non-refoulement.

The rationale behind this principle is that every refugee is, initially, an asylum seeker; therefore, to protect refugees, asylum seekers must be treated on the assumption that they may be refugees until their status has been determined. Otherwise, the principle would not provide effective protection for refugees, because applicants might be rejected at borders or otherwise returned to persecution on the grounds that their claim has not been established.

This principle also protects asylum seekers from being “indirectly refouled” – i.e. being returned to a country from where he/she may further be sent to a place where his/her life or freedom would be in danger.

3.2. Access to Procedure

A primary consideration is that refugee claimants must be given access to the refugee status determination procedure (RSD procedure). Access to the RSD procedure depends upon the decision concerning the claimant’s admission to the territory. States must be careful to ensure that claimants are not summarily rejected at their borders before their claims have been considered due to the fact that refugee status is of a declaratory nature (a person does not become a refugee because of recognition, but is recognised because he/she is a refugee) and due to the fact that the principle of non-refoulement applies to asylum seekers whose requests for refugee status have not yet been determined.

3.3. Detention of Asylum Seekers

As a general principle, **asylum seekers should not be detained.** Of particular importance is that asylum seekers do not face detention as a punishment for their illegal entry or presence in the country of asylum, nor restrictions of movement.

According to the UNHCR Guidelines, the detention of asylum seekers may only be resorted to if necessary:

- to verify identity,
- to determine the elements on which the claim for refugee status or asylum is based,
- in cases where asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum,
- to protect national security and public order.

Further, detention must be clearly prescribed by national law and all possible alternatives to detention should be considered before resorting to it pursuant to one of exceptional grounds.

3.4. Recognition of a Vulnerable Situation of Refugee Claimants

Any RSD procedure should recognise that a refugee claimant is normally in a particularly vulnerable situation due to reasons such as the fact that he/she is in an **alien environment** and may experience serious difficulties, technical and psychological, in submitting his/her case to the authorities of a foreign country, especially where the application is being made in a **foreign language**. Refugee applications should, therefore, be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs.

4. Procedural Requirements

Certain procedural requirements should be set in order to ensure an efficient and qualitative RSD procedure. They are the following:

- sufficient knowledge of the competent officials in relevant international instruments,
- necessary guidance for the applicant,
- a clearly identified authority for examining requests,
- the applicant's right to a personal interview,
- the information provided by the applicant has to be treated as confidential,
- contact with the authorities from the applicant's country of origin is generally inadvisable,
- special measures in applications for vulnerable groups (women, children, mentally disturbed, etc),
- necessary facilities and services given to the applicant,
- information and refugee documents for the refugee,
- a right to appeal,
- a right to remain in the country pending a decision by the competent authority.

5. Basics on the Common European Asylum System

Cooperation of the EU Member States in the field of asylum was a reaction to implementation of the free movement of persons principle and abolition of internal frontiers. It was not a result of a desire to enforce an efficient common system for protection of refugees. On the contrary, the cooperation was concentrated on protection of internal security, where, because the Member States partially gave up their sovereignty over the control of free movement of third country citizens, they strengthened the control of external borders, restricted conditions for entering the territory (visa policy, police cooperation, cooperation of judicial bodies), with reinforcing the safe third country regime, concluding readmission agreements, and accepting measures with aim to harmonise asylum and migration policies of the Member States.

With the Amsterdam Treaty (1997) the EU has set an ambitious project: to form a so called “Common European Asylum System”, based on minimal standards. The process of harmonisation of the European asylum law began in 1985 and reached its peak in 1997 -1999 with the creation of a so called Area of Freedom, Security and Justice with the Amsterdam Treaty.

5.1. The Period before the Amsterdam Treaty

The main aims of the 1985 Schengen Agreement were:

- abolition of internal frontiers (aim: freedom of movement);
- strengthening of the external borders’ control; and
- cooperation in combating cross-border crime.

A few non-binding resolutions and recommendations on asylum and migration were adopted at that time.

The **Dublin Convention** (adopted in 1990, effective from 1997) was adopted, defining responsibility of the Member States for considering the asylum applications. In 2003 this convention was replaced by the **Dublin Regulation**.

With the Maastricht Treaty (1993) the field of asylum, migration and policy towards third country nationals were listed in the Third Pillar and defined as a matter of common interest. Nevertheless, intergovernmental cooperation did not bring any noticeable results: only a few incomplete and **non-binding resolutions** were adopted and the Member States refused to incorporate them into their national legislations.

In the early 1990s, the number of asylum applications from European countries (the Balkans, Turkey) as well as non-European countries (Iraq, Afghanistan) in the EU increased. Because the processing systems of the Member States were put under pressure they have developed different systems for temporary protection and other forms of provisional statuses, instead of granting a refugee status to the persons in need of international protection. At the same time the Member States were faced with an increasing number of asylum applications which they regarded as “manifestly”

unfounded, because they were supposedly lodged by economic migrants in search for better life, or the applications did not contain any reason with a protection element. National legislation, adopted at that time, reflected the aim to enable speedy identification and filtering out of unfounded applications. Increase in human smuggling and trafficking was noticed. It appeared that the networks were well informed about different asylum procedures and practices in the Member States. Targeted were those Member States which had:

- good prospects for accepting asylum applications;
- easy access to the labour market; and
- various possibilities for integration.

As a result, a growing demand to harmonise rules and practices between the Member States appeared.

With the adoption of the **Amsterdam Treaty** the asylum policy became part of the First Pillar. In the following 5-year period (1999 – 2004) the Council, in compliance with the Convention relating to the Status of Refugees, the Protocol and other international treaties, adopted the following measures, concerning asylum:

- determining of a state, responsible for considering asylum applications,
- reception conditions,
- refugee status criteria,
- refugee status determination procedure and withdrawal procedure.

5.2. After the Amsterdam Treaty

Development of the Common European Asylum System demanded the adoption of **binding legislative instruments** which could set up common standards and operative strategies. At the same time common minimal standards were meant to allow the Member States to keep high level of discretion when implementing their asylum systems. It was accepted that the subsidiary principle and proportionality principle should be recognised in the field of asylum and migration: the Community should act only and when a Member State could not satisfactorily reach aims of proposed and planned activities.

As a result, most asylum instruments were formed as directives which set **common minimal standards**, while the Member States are able to choose the most appropriate forms and methods for their implementation into national systems.

6. Legal Framework

Important documents which form the EU Acquis on Asylum can be divided into three categories:

- International treaties which are of such importance they should also relate to asylum:
 - The Convention relating to the Status of Refugees (1951);
 - The Protocol to the Convention relating to the Status of Refugees (1967);
 - The European Convention on Human Rights (1950);
- Instruments adopted before the Maastricht Treaty came to effect:
 - The Dublin Convention (1990), replaced by the Dublin Regulation (2003) etc.;
- Instruments adopted by the Council after the Maastricht Treaty
 - Temporary Protection Directive (2001);
 - Reception Directive (2003);
 - Family Reunification Directive (2003);
 - Qualification Directive (2004);
 - Procedural Directive (2005).

7. Border Monitoring and its Legal Basis

7.1. The Dublin Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (2003)

The aim of Dublin Regulation is to set up common criteria to determine the single Member State which is responsible for examining an asylum application. The criteria have been identified in order of importance: presence of a family member with a refugee status; visa or valid residence permit issued by a certain Member State; irregular crossing of the border of a Member State; and the responsibility for controlling the entry.

Once determined, the State responsible must apply its national laws and the provisions of the Convention relating to the Status of Refugees.

7.2. Temporary Protection Directive / The Council Directive on Minimum Standards for Giving Temporary Protection (2001)

The Directive is based on solidarity principle (division of burden between the Member States). Protection is limited in time and **a mass influx of displaced persons** in need of protection can be established with the Council's conclusion. For granting protection it is not necessary to establish well-founded fear from being persecuted for each individual. Such protection should not be considered as protection under the Geneva Convention.

7.3. Reception Directive / The Council Directive laying down minimum standards for the reception of asylum seekers (2003)

The aim is to ensure that asylum seekers enjoy a **dignified standard of living and equal treatment** across the EU wherever they arrive. Outlined minimum standards are both material and procedural (accommodation, health care, education, employment, legal security).

Article 3: Third country nationals and stateless persons as well as their family members may make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers.

Article 5: Asylum seekers should be informed within a reasonable time not exceeding 15 days of any established benefits and obligations they must comply with. The information should be provided in writing and in a language that the applicants may reasonably be supposed to understand.

Article 6: After lodging the application, Member States shall ensure within three days that the applicant is provided with a document certifying his/her status or testifying that he/she is allowed to stay in the territory of the Member State while the application is pending. An exception to the rule may be made during the examination of an application for asylum made at the border or within the context of a procedure to decide on the right of the applicant legally to enter the territory.

Article 7: Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. Member States may confine an applicant to a particular place when it proves necessary (reasons of public order, legal reasons), in accordance with their national law.

Article 14: When housing is provided to applicants in kind, it can also take the form of premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border. These material reception conditions shall be as short as possible, when the asylum seeker is confined to border posts.

7.4. Family Reunification Directive / The Council Directive on the right to family reunification (2003)

The purpose of the Directive is to determine the conditions for the exercise of **the right to family reunification** by third country nationals residing lawfully in the territory of the Member States.

7.5. Qualification Directive (2004)

This directive provides for a common approach to qualifying conditions for those who are entitled to either refugee status or subsidiary protection. The text lays down **common guidelines on how to interpret various concepts surrounding the refugee definition** (notion of “persecution”, “internal flight alternative”, “withdrawal of

status”, “exclusion from status”, etc.). The Directive also represents an attempt to harmonise the contents of status through rights and benefits of both refugees and persons eligible for subsidiary protection.

7.6. Procedural Directive / The Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005)

The procedural directive sets out **minimum standards** that the Member States should respect when conducting asylum procedures. The Preamble of the directive states that because many asylum applications are made at the border or in a transit zone or prior to a decision on the entry of the applicant, Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.

Article 3: The Directive applies to all asylum applications made in the territory, including at the border or in the transit zones of the Member States.

Article 35 defines border procedures: Procedures on asylum applications lodged at the border or transit zones may be carried out at such locations, but only in accordance with the basic principles and guarantees as set by the Directive.

The basic principles and guarantees:

- Access to procedure (to lodge application in person and/or at a designated place);
- Right to remain in the Member State pending the examination of the application;
- Requirements for the examination of applications (not excluding applications from examination solely because they have not been made as soon as possible, decisions taken after appropriate examination, precise and up-to-date country of origin information obtained from various sources, personnel having the knowledge with respect to relevant standards applicable in the field of asylum and refugee law, translation of relevant documents);
- Right to legal assistance and representation (at applicants' costs, in the event of a negative decision free legal assistance and/or representation is granted on request);
- Guarantees for unaccompanied minors (representation of a minor, personal interview must be conducted by a person who has the knowledge of the special needs of minors, must be informed that the medical examination to determine their age will be carried out);
- Asylum seekers shall not be held in detention solely because they are applicants; when in detention, there must be a possibility of speedy judicial review available;
- The role of UNHCR and organisations working on behalf of the UNHCR (access to applicants, access to information on individual applications);
- Member States shall not directly disclose to or obtain information from the alleged actor(s) of persecution.

At the border or transit zones procedures may be preserved, in order to decide whether applicants who have made application at such locations, may enter the territory. Still, procedures shall be carried out in accordance with the following principles:

- persons are allowed to remain at the border or transit zones;
- they are immediately informed of their rights and obligations (information in a language they may reasonably be supposed to understand, access to an interpreter when submitting their case, opportunity to communicate with the UNHCR and other organisations working on their behalf, notification of the decision by the determining authority given in reasonable time in a language they understand);
- they have access to the services of an interpreter;
- they are interviewed before the competent authority takes a decision;
- they can consult a legal adviser;
- they have a representative appointed in the case of unaccompanied minors.

In case permission to enter is refused by a competent authority, the reasons in fact and in law should be stated.

A decision shall be taken within a reasonable time. When not taken in four weeks, the applicant shall be granted entry to the territory.

Article 39: The applicants shall have the right to an effective remedy before a court or tribunal against a decision regarding their application for asylum, including a decision taken at the border or in the transit zones.

Chapter II:

**BORDER PROCEDURES WITH VULNERABLE GROUPS OF
ASYLUM SEEKERS**

By Franci Zlatar

1. Introduction

This part of the manual describes principles of border procedures with vulnerable groups of asylum seekers, refugees and migrants, such as **elderly, children, women, survivors of violence, people with physical or mental disabilities and ethnic minorities**. Since women and children are the largest among the groups with specific protection concerns (they make approximately 80 % of all vulnerable persons), particular attention will be paid to these two groups.

The rights and protection concerns of asylum seekers and refugees (including vulnerable groups) have been explicitly acknowledged in a number of national and international laws. There is an abundance of sources³ to guide humanitarian workers on how to identify and develop responses to the specific protection concerns related to gender, age, and ability or health status.

Among these, **gender and age are specifically important factors**. Specific protection problems arise within the female asylum seeking population due to overwork, deprivation, and social exclusion that derive from discrimination by all actors including humanitarian agencies. Female refugees tend to be overrepresented in the age category of 60 and over, reflecting a longer life expectancy of women compared to men. Consequently, the special needs of elderly women are particularly prominent in countries with ageing refugee populations.

Needs of asylum seeking and refugee children are multi-faceted, depending in large part on their age. All children have specific protection needs because they are developing physically and emotionally. All children are at risk of sexual exploitation and abuse, which can occur within the family and community. Refugee children face additional protection problems related to the cause and consequences of displacement. Refugee children separated from their parents or primary caregivers need immediate attention and protection.

Special protection concerns arise in relation to refugees who are **elderly** and people with **physical or mental disabilities**. Protection and assistance programmes should take their specific concerns into account as an essential component of the protection of refugees.

It is of primary importance for **ethnic minorities** to be able to maintain their mother tongue and their cultural identity. That is why physical safety, representation and appropriate opportunities to practise faith or culturally based activities should be assured.

Access to counselling and specific health-care support is needed for **survivors of violence**.

Special attention to members of vulnerable groups of refugees should be paid in border procedures, taking into account their specific concerns.

³ For most important ones in this context look at the chapter 'sources'.

2. Refugee Women

Refugee women have specific protection needs due to their position in societies, as well as additional protection needs due to their particular vulnerability at each different stage of their displacement. Their specific protection needs reflect their gender: they need, for example, **protection against manipulation, sexual and physical abuse and exploitation**, and **protection against sexual discrimination** in the access to goods and services.

The rights of women are ensured, inter alia, in the following conventions:

- 1951 Convention relating to the status of Refugees (Geneva Convention) and its 1967 Protocol relating to the Status of Refugees,
- Universal Declaration of Human Rights,
- 1949 Geneva Conventions and the two 1977 Additional Protocols,
- International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,
- Convention on the Elimination of All Forms of Discrimination against Women.

According to the Article 1 of Convention on the Elimination of All Forms of Discrimination against Women, no distinction, exclusion or restriction should be made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field.

Within the female refugee population there are women who are particularly vulnerable to protection problems, for example, **unaccompanied adolescent girls and women, elderly women and disabled women**.

2.1. Sexual and Gender-Based Violence

UNHCR and its implementing partners⁴ define gender-based violence as “violence directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. [. . .] While women, men, boys and girls may become victims of gender-based violence, women and girls are the main victims” (see also Chapter III).⁵

Gender based violence shall be understood to encompass, but not be limited to the following:

⁴ Implementing partners or ‘IPs’ are usually non-governmental organizations carrying out protection activities in the field in accordance with UNHCR’s mandate.

⁵ Expanded Definition of Sexual and Gender-Based Violence, based on Articles 1 and 2 of the UN General Assembly Declaration on the Elimination of Violence against Women (1993) and Recommendation 19, paragraph 6 of the 11th Session of the CEDAW Committee; (in Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons; Guidelines for Prevention and Response. UNHCR, 2003).

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- c) Physical, sexual and psychological violence perpetrated or condoned by the State and state institutions, wherever it occurs.

Sexual and gender-based violence occurs in all classes, cultures, religions, races, gender and ages. It occurs also during the flight of women in a form of a sexual attack by bandits, border guards, pirates, or a capture for trafficking by smugglers and slave traders.

The multi-sectoral approach is the framework upon which the actions to prevent and respond to sexual and gender-based violence are conducted. It includes the following:

- **Protection:** international protection entails taking all necessary steps to ensure that refugees are adequately protected and can exercise and enjoy their rights (including efforts to prevent and respond to sexual and gender-based violence against refugees).
- **Refugee Community Action:** refugees should be actively engaged in designing, planning and implementing all activities, including those intended to prevent and respond to sexual and gender-based violence.
- **Co-ordination Function** among and between the various actors, such as refugee community, health, psycho-social, legal/justice and safety & security institutions.
- **Involvement of all Key Actors:** there are many other actors (UN organisations, NGOs, government authorities, local communities) whose contributions are necessary, but they are not specifically included either in the refugee group or in the sectoral groups. Their roles and responsibilities need to be clearly defined.

2.2. Border Procedures with Women⁶

For many asylum seekers and refugees, the violent situations that cause women to flee their home countries are only the beginning. The path of the refugees may itself present such dangers as rape and abduction. During flight, refugee women and girls could become victimized by pirates, border guards, army and resistance units, male refugees, and others with whom they are in contact.

It is important that **trained international staff** is placed in border areas which refugee women cross in order to enter countries of asylum as well as in reception

⁶ Main source: Guidelines on the Protection of Refugee Women, UNHCR, (1991).

centres, refugee camps and settlements. In addition, staff in NGOs and UN agencies can serve as an important protection arm of UNHCR by identifying problems of women and, through their very presence, deterring such problems.

In border units and in refugee camps and other places of settlement **female protection officers** should be employed. Refugee women may be reluctant to report abuses, particularly of a sexual nature, to male staff.

Further, **female interpreters** should be employed and trained in protection issues related to women. Border guards, police, military units, NGO staff and others who come into contact with refugees should be **trained on gender-related issues**. The training should include sessions on the rights of refugee women under international law, the responsibilities that the host country has in protecting these rights, and specific actions that can be taken to increase the protection of refugee women.

The refugee women should be involved in decisions affecting their security. Among the decision about which the refugee women should be consulted are:

- identification of particularly risky situations;
- mechanisms to improve the reporting of physical and sexual protection problems;
- programmes for building upon traditional protection mechanisms that have proven beneficial and avoid harmful practices;
- improvements of implementation of assistance programmes to ensure greater safety; and
- programmes for addressing the needs of victims.

Both in detention and refugee centres women should be accommodated in special quarters. Protection concerns particular to refugee women should be addressed in all other sectors of refugee programmes, such as health programmes. Special activities for refugee women, such as self help groups, should be organised.

While interviewed, women face special problems in making their case to the authorities, particularly when they have had experiences which are difficult and painful to describe. Persecution of women often takes the form of sexual assault. The female victim of such sexual torture obviously may be reluctant or find it very difficult to speak about it, particularly to male interviewer. So, the **interviewer should be female**.

The mentioned multi-sectoral approach should be considered in border procedures with women. Special attention of border guards and other staff placed on border should be paid to potential victimization of women by sexual and gender-based violence.

3. Children and Adolescents

According to the **Convention on the Rights of the Child (CRC)**, a child means “every human being below the age of eighteen years unless under the law applicable to a child majority is attained earlier” (article 1 of the CRC). This definition may cause some confusion because it equates a child with ‘a minor’. A dictionary definition of ‘a

child', on the other hand, is "a person who has not yet reached puberty or sexual maturity." A person who is no longer a child but not yet an adult is an adolescent, or a young man or young woman. The main reason why adolescents are included under CRC is the fact that although **they may have adult bodies and perform many adult roles, generally speaking they have not fully developed in terms of their emotional maturity and judgment, nor have they achieved the social status of adults that comes with life experience** (UNHCR, 1994). For these reasons in refugee situations adolescents do need the special care and assistance given to them by the CRC. Accordingly, the word child will be used in further text for both 'a child' and 'an adolescent'.

Besides the CRC, protection standards for refugee children are defined in national laws based upon international refugee law, human rights law and international humanitarian law. The CRC offers the highest standards of protection and assistance for children of any international instrument. The CRC is also the most widely ratified international instrument in the history of the world. The CRC has no derogation clause, which means that it applies at all times to all children with no exception. The four core principles of the CRC are:

- children should not suffer discrimination (this has obvious implications for refugee children, who are often considered as a category apart from other refugees);
- in all actions concerning children the best interest of the child should be a primary consideration;
- children have the right to participate in decisions that affect them.

It is important to mention that usually more than half of any refugee population are children. Refugee children are children first and foremost, and as children, they need special attention. Children are vulnerable as such. **They are susceptible to disease, malnutrition and physical injury.** Refugee children are extremely vulnerable. Their vulnerability has many aspects: legal, emotional, practical. Legally, children who are asylum seekers, have far fewer rights than indigenous children. Furthermore, they are often exposed to a range of emotional events, which may include massive loss, disruption, fear and huge, unexpected changes. At the same time they face practical difficulties as basic as the lack of housing and welfare rights, difficulties with schooling and problems with health-care provision. (Woodcock in Dwivedi, 2002: 264, 265).

The 1951 Geneva Convention and the 1967 Protocol set standards that apply to children in the same way as to adults:

- a child who has a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of the country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it' is a 'refugee';
- a child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulement); and
- no distinction is made between children and adults in social, welfare and legal rights.

The article 22 of the Convention sets standards which are of special importance to children: “The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education, and treatment at least as favourable as that given to non refugee aliens in secondary education.”

‘**Separated children**’ are children under 18 years of age who are outside their country of origin and **separated from parents or their previous legal/customary primary caregiver**. Some children are completely alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution and lack of protection due to the human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation (SCEP, 2004).

3.1. Border Procedures with Children - Introduction

The following basic principles⁷ should be borne in mind in all actions concerning children in border procedures:

1. **Best interest:** The best interest of the child shall be a primary consideration in all actions concerning children.
2. **Non-discrimination:** Refugee children are entitled to the same treatment and rights as national or resident children. They should be treated as children first and foremost. All considerations of their immigration status should be secondary.
3. **The right to participate:** The views and wishes of refugee children should be sought and taken into account whenever decisions affecting them are being made. Measures should be put in place to facilitate their participation in line with their age and maturity.
4. **Respect for Cultural Identity:** It is important that children are able to maintain their mother tongue and links with their culture and religion. Care should be taken not to perpetuate those aspects of cultural traditions that are harmful to and discriminate against children.
5. **Interpretation:** In all legal procedures (including border procedure) children should be provided with suitably trained interpreters who speak their preferred language.
6. **Confidentiality:** Care should be taken not to disclose information about a child which could endanger the child’s family members in her or his home country. The permission of the children should be sought in a manner appropriate to their age before sensitive information is disclosed to other organisations or individuals. Information should not be used for purpose other than for those for which it is given.
7. **Information:** Children should be provided with accessible information about border procedures, services available, and the asylum procedure.

⁷ Separated Children in Europe Programme: Statement of Good Practice (2004), chapter B. First principles (page 7).

8. **Inter-organisational Co-operation:** Organisations, government departments and professionals involved in providing services to children should co-operate to ensure that the welfare and rights of children are enhanced and protected. A holistic approach should be adopted in trying to meet the interconnected needs of children. In this manner border authorities should co-operate with NGOs and welfare institutions to ensure the best solutions for children.
9. **Staff training:** Those working with children should receive appropriate training on the needs and rights of children. Immigration and border police staff should receive training in conducting child-friendly interviews.
10. **Durability:** Decisions that are taken regarding children should take account of, to the greatest extent possible, the long-term best interest and welfare of the child.
11. **Timeliness:** All decisions regarding children should be taken in a timely fashion taking into account the child's perception of time.

3.2. Detention and Access to the Territory⁸

Children seeking protection **should never be refused entry or returned** at the point of entry. They should not be subjected to detailed interviews by immigration authorities at the point of entry. Some children travel on their own as migrants seeking relief from situations of poverty, deprivation and hardship. Should they come to the attention of the authorities, child migrants should never be removed from the country without a thorough assessment of the situation in their country of origin. They should be entitled to make an asylum application and/or an application for residence. All separated child migrants should have access to child welfare protection, education and health services.

Children **should never be detained** for immigration reasons. This includes detention at the border, in international zones, detention centres, police cells, prisons or any other special detention centres for young people. "Fleeing one's country to escape persecution is an extremely painful experience. For those detained on arrival in their country of refuge the experience is all the more traumatic." (Bracken, Gorst-Unsworth, 1991:1)

Unfortunately children are sometimes detained or threatened with detention because of their own or their parents' illegal entry into a country. According to the CRC, detention must be used only as a **measure of the last resort** and for the shortest needed period of time. If refugee children are detained, they must not be held under prison-like conditions. Special arrangements must be made for living quarters which are suitable for children and their families. Families must be kept together at all times which include their stay in detention as well as being released together. Protection and assistance should ensure that international standards are complied with whenever children are in detention. Detention must be in conformity with the State's law. A distinction must be made between refugees/asylum seekers and other aliens. Detention must have a proper legal justification. Detention must never be used to punish asylum seekers or to deter or scare off other potential asylum seekers. The

⁸ Main sources: Separated Children in Europe Programme: Statement of Good Practice (2004); Refugee Children: Guidelines on Protection and Care, UNHCR (1994).

conditions must be humane, which means that the need of refugee children must be met. Asylum seekers and refugees should never be placed together with common criminals.

3.3. Identification, Appointment of a Guardian or Advisor, Registration and Documentation of Separated Children in Border Procedures⁹

At ports of entry immigration authorities should put in place procedures to identify separated children and to refer such children to the appropriate child welfare authorities. Where an adult accompanies the children, it will be necessary to establish the nature of the relationship between the child and the adult. Since many separated children enter a country without being identified as separated at points of entry, organisations and professionals should share information in order to identify separated children and ensure they are given appropriate protection.

As soon as a separated child is identified, an **independent guardian or advisor** should be appointed to advise and protect separated children. Regardless of the legal status of this person (e.g. legal guardian, NGO worker) their responsibilities should be as follows:

- to ensure that all decisions taken are in the child's best interests,
- to ensure that a separated child has suitable care, access to accommodation, education, language support and health care provision,
- to ensure a child has suitable legal representation to deal with her or his immigration status or asylum claim,
- to consult with and advise the child,
- to contribute to a durable solution in the child's best interests,
- to provide a link between the child and various organisations who may provide services to the child,
- to advocate on the child's behalf where necessary,
- to explore the possibility of family tracing and reunification with the child,
- to help the child keep in touch with his/her family.

The individuals carrying out these responsibilities may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, advisers or guardians should have **relevant childcare expertise** and an understanding of the special and cultural needs of separated children. They should receive training and professional support, and undergo police reference checks.

In border procedures with separated children it is of a primary importance not to take any important decision regarding the child situation without the **consideration of her/his views and wishes**. The final decision should always be taken with the presence of a guardian or appropriate welfare authorities. A separated child may be returned to his/her country of origin or a third country only if the return¹⁰ is considered

⁹ Main source: Separated Children in Europe Programme: Statement of Good Practice (2004).

¹⁰ Before a separated child can be returned to a country of origin the following should be in place (Separated Children in Europe Programme: Statement of Good Practice (2004), chapter C. Good practice (page 31):

to be in the best interests of the child. All other considerations such as combating illegal immigration should be secondary.

Registration and documentation are essential to protect the long-term interests of separated children. This should be carried out by a **‘twin-track’ interview procedure**: Immigration and border police officers should limit their interviews to gathering basic information about the child’s identity. Interviews by immigration authorities should always be carried out in the presence of a legal counsellor, a guardian or other mandated person.

A complete social history should be recorded by the competent child welfare authority or other designated organisation with care duties towards children. All those interviewing separated children should have appropriate training and expertise in interviewing separated children.

3.4. Determining Age in Border Procedures¹¹

It is often necessary for border authorities to determine the age of a young person who is entering the country. States face practical problems in determining age. A refugee’s birth might never have been registered, or identity documents never issued. Identity papers are sometimes lost, forged, or destroyed. Even when the papers are in order, authorities might question their validity.

When the identity documents are not relied on to establish the age, the authorities usually base age assessment on **physical appearance** of a child. However, age-assessment should take into account **physical, developmental, psychological and cultural factors**. Sometimes ‘scientific procedures’ are used, such as **dental or wrist bone x-rays**. If an age assessment in border procedures is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child’s ethnic or cultural background should carry it out. Examinations should

-
- careful assessment is made whether it is safe to return the child to his or her home country, taking into consideration risks of persecution, of being involved in armed conflicts, of violence and abuse, and of being exploited;
 - the child’s caretaker and guardian/advisor in the host country agree it is in the child’s best interests to return;
 - a careful assessment is made of the family situation in the home country,
 - a careful assessment is made of the access to food, housing, health care, education, vocational training and employment opportunities in the home country,
 - the investigations should be carried out by a professional and independent organisation and should be objective, non-political and take into consideration the best interests of the child in each case,
 - the child’s parents, relatives or other adult caretaker agree to provide immediate and long-term care upon the child’s arrival in the country of origin,
 - the child is fully informed and consulted at all stages and is provided with appropriate counselling and support,
 - prior to the return contact between the child and his or her family is facilitated,
 - during the return the child is properly accompanied.

¹¹ Main sources: Separated Children in Europe Programme: Statement of Good Practice (2004); Refugee Children: Guidelines on Protection and Care, UNHCR (1994).

never be forced or culturally inappropriate. Particular care should be taken to ensure they are gender appropriate.

In case of doubt there should be a presumption that someone claiming to be less than 18 years of age, will provisionally be treated as such. It is important to note that age assessment is not an exact science and a considerable margin of error is present. In making an age determination children should be given the **benefit of the doubt**.

3.5. Interim Care and Durable Solutions¹²

It is important to mention again the principle of durability stating that all decisions taken regarding children should take account of, to the greatest extent possible, the **long-term best interest and welfare of the child**. In such a manner all decisions regarding a child in border procedures should have a durable or long term character.

Children, specially separated children are entitled to **special care and protection**. They should be found suitable care placements as soon as possible after arrival and identification. Care authorities should conduct careful assessment of their needs and any changes in care arrangements should be kept to a minimum. Regular reviews of care arrangements should be carried out. Where children live with relatives, these relatives should be assessed for their ability to provide suitable care and undergo police checks. Children over 16 years of age should not be treated as 'de facto' adults and placed on their own, without adult support, in hostel or reception centre settings.

Whether they are placed in foster care or in residential settings children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs and who have an understanding of those issues that affect migrant children. Those working with children should be aware that children are entitled to privacy and to maintain a confidential relationship with their guardian and/or legal representative and any other advocate.

Care workers should help a child develop links with their ethnic community whenever possible.

Child victims of trafficking should not be held in immigration detention in order to protect them from traffickers. Alternative secure measures such as safe houses should be developed in conjunction with child welfare authorities. In order to establish these safeguards, care workers in reception centres and residential homes need to be made aware of the problem of trafficking of children for the purpose of prostitution or other forms of exploitation. For more information on the victims of trafficking please see the following chapter.

¹² Main sources: Separated Children in Europe Programme: Statement of Good Practice (2004); Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UNHCR (1007).

Children should have **access to health care** on an equal basis with children who are nationals of the host country. They should also have access to the same statutory education. In order to preserve their cultural identity children should have access to mother tongue teaching. Vocational and professional training should be available to children (adolescents). It is important to mention that in fact, no matter how temporary their stay, children (and also families) are **absolutely entitled to education, health services and social services** when there is a statutorily defined need – in practice this qualifies them to the same rights as the indigenous population. (Woodcock in Dwivedi, 2002: 268)

In principle there are three modes of **durable solutions** for migrant children:

- remaining and integration in host country;
- family tracing and reunion (in cases of separated children); and
- returning to the country of origin.

A child may be **allowed to remain** in a host country if the following conditions apply:

- she/he is recognised as a refugee, as a person in need of protection or granted asylum;
- she/he receives a de facto status or is granted permission to remain on the territory of the host country for humanitarian reasons;
- she/he is a victim of trafficking and it is not safe to return to her/his country of origin,
- it is clearly in the child's best interests to remain in the host country.

As soon as the child has been recognised a refugee status or permitted to stay on the basis of other reasons, **long-term placement in a community** should be arranged. To facilitate the integration of the child into the host country a structured orientation programme in which the child is given a thorough explanation of his/her legal status and a brief introduction to the host culture should be provided. The information should be adapted to the age of the child. It is generally desirable that separated children under 15/16 years age are cared for in a foster family from their own culture. Older children may prefer to be/do well in a small group home environment. This environment should be staffed by properly trained care workers aware of the separated children's cultural needs. Separated children who have reached the age of majority should be offered support via an 'after-care' programme, to assist their transition to living independently. The rights of the separated children to education and training, health care, language support and employment should continue on the same basis as available to national children and according to national laws. Separated children who are found to be stateless, should be assisted to acquire nationality.

Family reunion is the first priority and it is essential that separated children are assisted in locating and communicating with their family members. All attempts should be made to reunite the child with his/her family or other person to whom the child is close, when the best interest of the child would be met by such reunion. Tracing child's parents and family needs to be undertaken as soon as possible, but this should only be done if it does not endanger the child or members of the child's family in the country of origin. Tracing should be undertaken only on a confidential

basis. States and other organisations undertaking tracing should co-operate with UN agencies, the International Committee of the Red Cross Central Tracing Agency and International Social Services.

Separated children seeking asylum or otherwise present in one of the European states sometimes have family members in another European state. European states should positively and proactively facilitate family reunion for the child in the state where the child's best interests will be met.

For the issue of returning to the country of origin see the section Identification, Appointment of a Guardian or Advisor and Registration and Documentation of Separated Children in Border Procedures.

4. Conclusion

In border procedures **special attention** should be paid to members of vulnerable groups of refugees, taking into account their **specific concerns**. What is common for all border procedures with vulnerable individuals is the following:

- border guards, police, military units, NGO staff and others who come in contact with vulnerable refugees should be trained on their specific concerns;
- multi-sectoral approach should be considered involving different actors: NGOs, social services, international organizations;
- cultural identity of vulnerable refugees should be respected;
- vulnerable refugees should be provided with suitably trained interpreters;
- vulnerable refugees should be entitled to make an asylum application and/or an application for residence;
- vulnerable refugees should have access to social and health services.

Chapter III:

VICTIMS OF TRAFFICKING – HOW TO RECOGNIZE THEM?

By Katjuša Kodele Kos

1. Introduction

Efforts to provide information and assistance to potential victims of human trafficking have generally been exercised either in countries of origin or in destination countries. In such circumstances most information campaigns have traditionally been designed to target broadly defined audiences in the hope that “the message” will eventually reach those who really need it.

It is an established fact that **national asylum procedures represent a migration channel that is vulnerable to exploitation by human traffickers** as a conduit for the transport of “human cargo” to destination countries. This is particularly the case in CE/EE/SEE countries with nascent asylum systems through which, for various reasons, significant numbers of asylum seekers “transit” for short periods of time on their way to Western European destinations. National asylum authorities, UNHCR and non-governmental organizations concerned with asylum in such countries, by virtue of their ready access to asylum-seeker reception facilities, are exceptionally well positioned to more accurately target a group of persons with information and assistance who are at a relatively greater risk of falling prey to human traffickers than the broad groups targeted in most traditional information and assistance campaigns.

Every country should provide formalised mechanisms which will provide information to those asylum-seekers most at risk of falling prey to human traffickers and to assist and protect victims of human trafficking as well as sex and gender based violence (SGBV) identified within the asylum procedures. The sooner the information reaches potential victims the better and for this reason providing information and adequate treatment of potential victims at the first contact with the state authorities in the country is essential. Since the first contact usually takes place at the borders or other premises where illegal migrants and potential asylum seekers are kept, information and appropriate treatment can already be provided through border monitoring activities.

Key elements of such treatment may include:

- Systematic provision of **one-on-one information sessions with a specialised NGO staff member for all female and separated children asylum-seekers** about trafficking in human beings;
- Systematic provision of **a brochure or a leaflet** to all female and separated children asylum-seekers which augments the verbal information session with vital written information to raise awareness and assist in the process of self-identification of potential victims, as well as to advise victims where they can access assistance in the host country and in destination countries in Europe;
- Ensuring that all victims of human trafficking identified in asylum procedures who wish to do so, can **access specialised assistance and protection** (safe houses, specialised counselling etc.);
- Ensuring that all victims of human trafficking identified in a country (within or outside of the asylum procedures) **have systematic access, where appropriate, to national asylum procedures**;
- Striving to ensure that **asylum-seekers who leave the country** and later find themselves in a victim situation in another European country **can access information and assistance** by contacting one of the organisations listed in the brochure or leaflet.

In general, the question **how to recognize victims of trafficking** is difficult to answer and has been many times examined by people who work with victims of trafficking for over 15 years. To gain at least some insight into the answer, we have to understand that trafficking in human beings is a complex matter and that persons who are, or could become victims of trafficking should be observed from many different perspectives.

Still, who are they? Perhaps it is easier to recognize them if we understand the elements that constitute trafficking in human beings as defined by criminal law.

Forms of exploitation, taken by trafficking in persons according to the Protocol for Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, are:

- exploitation for the purpose of prostitution of another person (commercial sexual exploitation) and other forms of sexual exploitation;
- forced labour or services;
- slavery, servitude and other practices similar to slavery; and
- removal of organs for the purpose of illegal transplants.

It has been observed that approximately **2,5 million men, women and children are victims of trafficking at any point in time**, and that at the very least one third of these are trafficked for economic purposes other than sexual exploitation: twenty-one percent for construction and thirteen percent for agriculture. The remaining victims (forty-three percent) had experienced coercion in sectors including domestic service and care work, small manufacturing, restaurants and catering, and food processing, among others. This picture may change from region to region, but forced labour occurs predominantly in sectors with a high degree of informal labour relations and lengthy subcontracting chains. The lack of information on job offers abroad and the dependence of migrants on private intermediaries are major factors behind forced labour. “Successful migrants” rely more often on trustworthy social connections or legal channels, whereas the majority of forced labour victims have fallen prey to unscrupulous intermediaries who exploit the lack of awareness among prospective migrants. Restricted access to legal migration channels has itself contributed to the growth of the private recruitment business, which sometimes operates at the borderline of human trafficking.

Nationals of the wealthier countries are understandably **reluctant to do the “3D” (difficult, dirty and dangerous) jobs**. But as wealthier countries place more and more barriers in the way of lawful and regular migration, criminal elements sense the opportunity to reap large profits. Some intermediaries charge huge sums for moving aspiring migrants unlawfully across borders and others use a range of coercive and deceptive practices to extract further profits in the place of destination.

In short, **human trafficking represents an opportunistic response to the tensions between the economic necessity of migrating, and the politically motivated restrictions on doing so**. In practice, the distinction between human smuggling and trafficking can be blurred. Indeed, many of those who end up in situations of forced labour have migrated of their own volition and became victims of forced labour on their way to or at their destination. (ILO research, 2003)

2. Who can become a Victim of Trafficking in Human Beings?

The answers are:

- Anyone from age 14 to 18. Moving from primary to secondary school, they lack experience and knowledge, they desire freedom offered by a more independent life than in primary school and are therefore exposed to potentially being deceived and forced into prostitution by a third person. This target group also includes secondary school students.
- Anyone who left home after being promised a well paid work without having to possess any kind of special knowledge or experience.
 - *"We offer well paid work abroad. Proficiency in foreign language not required."*
- Anyone who went on a trip abroad being invited by a person who then abused that trust, infatuation or naivety.
 - *"... I ran away from home. We went to Amsterdam. We made love for the first time. I was very much in love. Next morning I woke up alone. I thought he just left the room for a moment. Someone knocked on the door. I opened up and saw two people I didn't know. They stepped into the room and told me he had sold me for 1000 EUR and that I now belong to them. I was hoping I was only dreaming and will wake up. I wasn't dreaming. Still, I didn't wake up for four years, when I finally broke free from the violence."*
- Anyone who went to a concert or a party accompanied by an unknown person.
 - *"Straight after our establishment [Association Ključ] in 2000, we successfully completed our first case of searching for two juvenile Slovenian citizens in the beginning of 2002. They were located in the Netherlands and were definitely on the way to become victims of trafficking in human beings. The search ended only after 11 hours after the girls' parents asked us for help in the search for their missing children. We helped Interpol with some data and were in direct contact with the Dutch Police who of course found the girls."*
- Anyone who chatted with an unknown person through a web chat.
 - *»Chatting on the Internet has always been very exciting especially with people from other countries. It was a wonderful feeling when an older guy was interested in me*

and even came to visit me from more than 100 km away and he brought me many gifts."

- Anyone who has had an experience of abuse in his/her childhood.
 - *"... my father was always touching me, caressing me and kissing me. He was kissing me everywhere. Over my entire body. To me that was normal behaviour until I discovered that fathers of my friends didn't do that. I didn't speak about it until I was fourteen. Then I lost my father. He left my mother and me and then my mother left me as well. I was left alone. There was no one left to caress and kiss me. I moved from a foster home into an orphanage. In the orphanage I have a lot of friends who caress and kiss me. Then they take me out for a juice."*

- Any child whose relatives made money with so that the family could survive for a whole month.
 - *"I come from Ghana. My parents sold me for two cows. At home I have four brothers and four sisters who need to be fed."*

- Any asylum seeker because it is an established fact that national asylum procedures represent a migration channel that is vulnerable to exploitation by human traffickers as they try to transport their victims as »human cargo« to destination countries.

- The next types of persons who are more likely to become victims of trafficking are members of the so called marginalized groups:
 - Roma;
 - people with special needs due to mental health problems or physical handicap;
 - people addicted to illegal drugs, since criminal organisations involved in trafficking are usually also involved in drug trade.

- Persons who find themselves in war zones and areas affected by natural disasters are a particularly vulnerable group. In the chaos resulting from such events, lost and orphaned children as well as single women who lost their housing are especially exposed.

3. Intensive feelings of victims of trafficking of human beings

Regardless of who they are, where they come from and in what way they are being exploited, all victims of trafficking of human beings feel the following:

- **Betrayal**
 - by her/his family;
 - by those who got her/him into trafficking;
 - by the government and society;
 - by God.
- **Lack of Trust**
 - in her/his abilities to cope;
 - in the good will of others.
- **Helplessness and Despair**
 - because she/he has lost control of her/his life and will never be able to get out of the situation in which she/he is in.
- **Shock**
 - a feeling of stiffness and lack of emotions, inability to cry and feel pain.
- **Doubts**
 - “Is this really happening?” “Why is it happening to me?”
- **Disorientation**
 - disorientation in time and space;
 - inability to stay in the same place;
 - memory problems;
 - inability to estimate the risk.
- **Fear**
 - that she/he is in great danger of traffickers finding and punishing her/him;
 - that she/he does not have a legal status and she/him can be prosecuted and punished by the authorities;
 - that her/his family will not accept her/him and she/he will be exiled from the community;
 - that no one will believe her/him and understand what she/he has gone through;
 - that her/his family is in danger because of her/him;
 - that she/he has got some disease, such as AIDS.
- **Guilt**
 - that she/he made a mistake and allowed them to deceive her/him;
 - that she/he did not meet the expectations of her/his family.

- **Anger**
 - at her/his self;
 - at the traffickers;
 - at the pimps;
 - at the people she/he asked for help and they did not defend her/him;
 - at the authorities;
 - at the society;
 - even at everyone who did not go through this.

- **Shame**
 - that she is dirty and corrupt because she worked as a prostitute;
 - that she is bringing shame upon her family;
 - that she/he didn't earn enough money.

They all share one thing: violence in captivity became a constituent part of their lives. Critical life events often radically change social, family, physical and psychological life of people. The consequences are often seen and felt for days, months and years.

The most common long term consequence of trauma events such as trafficking in human beings is **posttraumatic stress disturbance**. It has many symptoms but not all are always present. Some are more explicit than the others. It is typical for the person even after being in a safe environment, to feel severe fear, anxiety, bodily disturbance and other intensive emotion-driven reactions. Events of trauma are re-experienced in thoughts, dreams and images. Reliving is triggered by sound, images, smell, similar circumstances and other stimuli reminding a person of that dreadful experience. General numbness can appear as well as headaches, disturbance of sleep and concentration and other disturbances making mental activities very difficult.

4. Expression of Abuse of Power and Control in a Situation of Trafficking

4.1. Use of Force

The perpetrator threatens and carries out his threats causing confusion and suffering:

- that he will not give her/him papers back;
- that he will return her/him over to the police;
- that he will sell her/him to another more cruel pimp;
- that he will sell her/him to trafficker with human organs;
- that there is nobody to give her/him food and water,
- that they will lock her/him up;
- that he will resort to physical violence or even kill her/him;
- making her/him do illegal things, involving her/him in criminal activities which make her/him vulnerable regarding the police.

4.2. Use of Demonstration of Physical Violence

The perpetrator makes the victim feel frightened through different activities, gestures, appearance by:

- smashing of objects and demonstration of rage;
- breaking and damaging the victim's belongings;
- beating up and raping other girls in front of her;
- threatening her/him with guns and weapons;
- creating the impression he is very strong, mighty and in good relations with the police and the authorities who are on his side.

4.3. Use of Emotional Violence

The perpetrator puts the victim in a subservient position, humiliates her /him by:

- making her/him feel bad, dirty, unimportant or as a person who does not deserve help and kindness;
- offending her/him;
- making her/him feel stupid and psychologically not sound;
- making her/him feel guilty.

4.4. Use Isolation and Control

The perpetrator controls what the victim does and who she meets, who she/he talks to, where she/he goes by:

- restricting her/his movements in the territory where she/he works;
- controlling her/his basic physical needs – food, clothes, toilet, hygiene;
- being present during her telephone conversations with her/his family in her/his country or not allowing them to make phone calls at all;
- bribing the police;
- punishing viciously each attempt at disobedience or freedom;
- choosing victims that often do not speak a foreign language.

4.5. Devaluation, Rejection and Victimisation

The perpetrator ignores the violence and its seriousness by:

- claiming the violence never happened;
- blaming his violence on different circumstances;
- alternating gestures of attention and kindness with violence;
- accusing the victim of provoking him.

4.6. Using Families and Children

The perpetrator makes the victim feel guilty and responsible for her/his family and children in her/his country of origin by:

- threatening that he will tell her/his family that she/he is a prostitute;
- threatening that her/his children and family will be harmed if she/he does not obey (in some cases these threats are carried out).

4.7. Physical Violence

The perpetrator uses physical violence in order to force the woman in prostitution by:

- subjecting her to gang rape;
- beating her up so that nothing shows (kidneys, feet);
- using various methods leading to deformations and leaving scars for life are used – burns with a cigarette, branding, cutting with a knife;
- exhausting her completely (by not allowing her to sleep or forcing her to work all the time).

4.8. Using Economic Violence and Financial Dependence

The perpetrator does not allow the victim to have any money by:

- taking all her/his earnings and give her/him a very small amount;
- persuading her/him she/he must work to pay back her/his debts incurred for travel and visas;
- deceiving her/him that the lodging and food are much more expensive than they really are and that her/his money is not enough to cover these expenses;
- hiding information from her/him about the amount she/he needs to pay for the above expenses;
- using financial fines and punishments as he finds appropriate without any rules and thus the money owed by the victim increases considerably and continuously.

WHEN YOU MEET A VICTIM OF TRAFFICKING, DO NOT ASK QUESTIONS:

- ✓ Why didn't you escape earlier?
- ✓ What were the things that you received for yourself regardless of the violence and abuse?
- ✓ What did you do to make him abuse (hit, kidnap, rape) you?
- ✓ What could you have done to make the situation less intense?

5. Good Practice Principles of Work with Survivors of Trafficking

5.1. Confidentiality

Anonymity and confidentiality are the most important condition in the work with victims and survivors of trafficking. The stories the victims tell about their lives, especially those involved in forced prostitution are connected with intensive feelings of shame. They are worried, and with good reason, that they will be rejected by the members of the community who do not have any understanding in this matter. The fear of stigmatization and marginalization is very strong. On the other hand the female survivors of trafficking have information about the criminal world and this makes them very vulnerable. Therefore the survivors should be absolutely certain that everything they share would remain absolutely confidential.

5.2. Safety

Most of the victims who managed to get out of trafficking risked their lives. They lived in extreme situations. Every day was a struggle for survival. All this destroys the basic feeling of safety and security needed for normal functioning. The restoration of these feelings is the first step in the process of their rehabilitation. The procedures and practices of the service providers should be aiming at guaranteeing the safety of its clients. In many cases this requires working in cooperation with the police and other competent institutions.

5.3. Informed Agreement and Choice

In a situation of trafficking the victims are not in control of their life, they have no choice and are acting under pressure. Resuming their independence is related to the opportunities for making choices about the future. In order to be able to do this, they need reliable information and a clear picture about the possibilities open to them. The team should offer support and partnership for taking important decisions and making plans for the future rather than advising. The counsellors act with the understanding that the victims are the most competent persons where their own situation is concerned and respect and accept all their decisions.

5.4. Empowerment

Life in a situation of trafficking destroys the idea of the person's own value and self-confidence. The counsellor dealing with victims should be aiming at restoring the confidence of the survivors helping them discover their strong points and qualities. The victims have to be treated with respect and their human dignity should be recognized. They are regarded as people who have the capacity to survive in extremely difficult conditions. The objective is to help the survivors believe in their own abilities and regain control over their lives.

5.5. Non-Victimising Attitudes

Holding the victims and not the perpetrators responsible is a widely spread mechanism of explaining violence. Similar victimizing attitudes exist towards the victims of trafficking as well – the women were looking for it, they were silly and naive, they knew they were going to work as prostitutes, they were looking for easy money or they did nothing to escape. The victims of trafficking encounter non-understanding and victimization in most people who should be helping them. Therefore they prefer to be silent and keep their suffering secret.

Victims of trafficking do not accept the situation passively. They are constantly trying to stop the violence and to protect themselves. Their efforts often remain invisible for the others and even for themselves. Faced with the unpredictable and irrational act of violence, it is usually best for them to protect themselves very cautiously.

That is why, we rather use for them the word “SURVIVORS” not “VICTIMS”.

Chapter IV:

BORDER MONITORING METHODOLOGIES

By Andreja Mrak and mag. Neža Kogovšek

1. Introduction

Even though democratic societies are familiar with a number of mechanisms designed for monitoring the asylum procedure, true democracy can only be established when effective monitoring is put in place by civil society or the wider public whose important part consists of non-governmental organisations (NGOs). **The purpose of such monitoring**, which requires active inclusion of NGOs into the monitoring of the asylum proceedings is **to form border and asylum procedures that are consistent with the interests of the society, i.e. procedures that guarantee the respect of human rights and their effective protection, and professional implementation of the asylum procedure** by way of ensuring external monitoring. For this purpose, the monitoring must be consistent with international human rights protection standards and the corresponding national legislation. Only then can NGOs influence the formulation of appropriate asylum policies and legislation through professional research, data and practice collection and development of suitable indicators.

In continuation, we will discuss **mechanisms and methodology** of NGOs for the monitoring of the asylum and border procedures as a form of an effective external control, which prevents various forms of unlawful encroachments on human rights suffered by asylum seekers during asylum procedures. Respect for the rights of these people and fulfilling their most basic human needs depend solely on the personnel in charge and on monitoring of such procedures in which every moment represents a risk for the violation of human rights, which in border and asylum procedures can translate into loss of human lives (e.g. if a person is returned to country where their life is in danger).

Specifically, we shall discuss the monitoring conducted by NGOs in connection with initial stages of the asylum procedure when acts of state bodies are the least controlled and asylum seekers are most sensitive. However, this does not mean that this is the only stage in the asylum procedure during which such monitoring is necessary. Namely, asylum seekers are people who, due to the failure of governments to protect human rights and to ensure the basic level of human existence, decided to leave their home, family, society and country in fear for their own lives, the lives of their children or loved ones. Correspondingly, the duty of other countries, which is specified in the international law by the Convention relating to the Status of Refugees (i.e. the duty to provide them with at least the lowest level of guaranteed protection), is not fulfilled until the refugee is successfully integrated.

2. What is monitoring?

Monitoring performed by NGOs in the initial stages of the asylum procedure is an integral part of the system of asylum seeker's protection. It is composed of various activities by NGOs, either in a form of **regular visitations or by permanent presence** in the initial stages of the asylum procedure, where the NGOs are in control of the situation during their conduct. Based on their findings, the NGOs can write reports and make suggestions or perform other activities aimed at improving the situation.

A handbook titled Human Rights Monitoring defines monitoring as:

“a planned and systematic investigation of a selected fragment of social reality, conducted within the framework of an adopted scheme ... and intended to bring about a change of this reality.”¹³

Monitoring therefore encompasses two important aspects:

- a) regular monitoring of the situation (e.g. regular visitations, (confidential) interviews with asylum seekers) and data collection;
- b) formulation of reports and recommendations for improvements and related activities aimed at influencing the formulation of appropriate policies and legislation.

In addition to NGOs as one of the forms of bodies independent of the government, monitoring can also be performed by various international organisations (UNHCR) or various official national bodies (internal watchdogs such as Ombudsman’s Office, or the judiciary). The process provides one of the three degrees of protection of the rights of asylum seekers:

- adoption of legislation conforming to international standards set forth by international law specifying suitable standards for the protection of the rights of asylum seekers;
- effective implementation of such legislation in practice;
- monitoring of the effectiveness of implementation of the legislation in practice.

3. Why Monitoring?

In the asylum procedure, monitoring ensures effective execution of international standards and the protection of (human) rights of asylum seekers thereby **making the asylum procedure even more transparent and further reducing the possibility of abuse of the asylum seekers’ rights**. Monitoring therefore:

- prevents abuse of the rights of asylum seekers, because the mere fact that somebody “from the outside” is present in the asylum procedure already prevents violation of rights;
- provides asylum seekers with direct protection, because it enables immediate reaction to any detected irregularities;
- also translates into establishing documentation which serves as a basis for the formation of various proposals or activities aimed at improving the appropriate asylum policy and legislation;
- provides asylum seekers with support, because it detects their needs and can consequently inform the personnel in charge and in control of asylum procedures thereof;
- represents a foundation for a constructive dialogue with everyone in charge and in control of the asylum policy and legislation.

¹³ The definition was provided by Marek Nowicki and Zuzana Sialova, Human Rights Monitoring manual, Warsaw 2001, at http://www.humanrightshouse.org/assets/1003Monitoring_eng.pdf.

Border monitoring activities have a double role: on one hand they are of humanitarian nature, but the sole presence of the NGOs on locations has an effect of control. Daily presence of a third party on locations decreases the possibility of tensions and disagreements between (potential) asylum seekers and the authorities.

4. Fundamental Principles and Standards of Monitoring

In order for the NGO monitoring to be effective and to fulfil its objectives, it is necessary that:

- the NGO conducting monitoring be personally, financially and functionally **independent**: this means that the personnel, financing and activity of the NGO must be independent of the state, politics and of the authorities;
- the NGO hold appropriate **authorisations** and powers for the execution of monitoring: the right to unrestricted and safe access to asylum seekers, the right to confidential interviews, the right to information access, the right to produce reports and recommendations, the right to direct, unrestricted and uncontrolled communication with the UNHCR;
- the NGO perform monitoring **regularly**, at any time (even unannounced) and disposes of experts and trained personnel for that purpose;
- an effective **national official body** or other appropriate safeguards for the rights of asylum seekers exist and are only supplemented or adequately critiqued by the monitoring of the NGOs.

At this point it has to be stressed that establishing monitoring by law **prevents the dependence of its existence on the current whims of the authorities**. In most cases international legal acts do not provide for it and NGOs must lobby for and conclude agreements which may serve as a basis and “permission” to perform monitoring. In comparison to legal regulation, such agreements are more flexible since they specify concrete procedures and powers, but they are at the same time also more liable to rapid changes and the will of the authorities. In lobbying for their conclusion it is recommended to emphasize that monitoring assists state bodies in their sensitive matters, because the provision of external control reduces the public distrust of state actions in asylum procedures. Furthermore, this serves to increase the country’s reputation at home and abroad (for more information on the agreement of understanding see below Planning the Monitoring).

The monitoring performed by NGOs in border and asylum procedures cannot replace official national monitoring bodies (e.g. human rights ombudsman), but can be critical of them and serve as their effective supplement. In this view, national NGOs are at an advantage over international (non-governmental) organisations, because it is much simpler for them to be present on the ground at all times. They are well familiar with the environment and possess good political, legal and social knowledge of the national issues. National NGOs therefore develop socially acceptable and suitable activities and a partnership with other institutions more easily and, consequently, a good strategy of communication with the authorities, the media and the society as a whole.

5. Subject and Issues of Monitoring

The subject of monitoring consists of those circumstances of which NGOs should be mindful when performing control of the border and asylum procedure. In the case of networking where monitoring is executed by multiple NGOs they can divide the area of control among themselves. It needs to be stressed, however, that circumstances regarding the treatment and procedure are inseparably interconnected, because the asylum procedure cannot be fair unless all procedural safeguards are in place. Disregard for such safeguards can lead to the violation of the right to life. It is proposed that some or all of the following fields are subject of border monitoring:

5.1. Treatment

5.1.1. Torture and other forms of cruel, inhumane or degrading treatment and punishment (prohibited by Article 3 of the European Convention on Human Rights and monitored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment):

- Is the competent body acting within its legal authority?
- Can the complete identity of the tortured person (or person treated or punished inhumanely, degradingly) and all surrounding circumstances be established (who carried out the act, who ordered it, where, when, precise description of the event, witnesses)
- Was a medical doctor provided and did he or she write a medical report on the event?
- Who has already been informed of the event and how did they act?
- What are the possibilities for appeal and legal aid? If an appeal has been lodged, what was the result?

5.1.2. Deprivation of liberty

- What are the safeguards in place for an (il)legal deprivation of liberty and have they been invoked?
- Are detained asylum seekers detained on legal grounds? Has the detention order been served to them? Once there is no legal ground for detention, is their transfer to an open-type accommodation centre timely?
- Is access to asylum seekers deprived of their liberty possible? Is there a possibility for a confidential interview?
- Does the asylum seeker deprived of liberty have the possibility to contact a lawyer and the outside world? Does he or she have access to legal aid?
- What are the living conditions in the facilities?
- How are individuals belonging to a vulnerable group treated?

5.2. Regular and Summary Procedure

- Is the asylum seeker permitted entry into the territory of the host country?
- Is it provided that the asylum seeker can remain in the territory of the host country for the duration of the procedure? (e.g. the issue of illegal deportations)?
- Is the asylum seeker given the chance to submit an application for asylum on time?
- Is an asylum seeker entering the host country illegally, punished for an offence of illegal entry?
- Does the asylum seeker have the right to an interpreter and has one been appropriately provided to him in a timely fashion?
- Has the asylum seeker been advised of his rights in a language he or she can understand?
- Does the asylum seeker have a (timely) access to a lawyer or legal aid? Can he or she choose it on his own? Is it free of charge?
- Does the asylum seeker have the right to be heard? What are the rules regarding the hearing and interrogation of asylum seekers?
- Does a competent body decide on the application for asylum (and not a body that has no competence regarding asylum seekers)? Is an asylum decision served to the applicant?
- Is the asylum procedure conducted in accordance with the asylum legislation?
- Does the asylum seeker possess an effective legal remedy against the decision of the competent body?
- Does the asylum seeker have access to non-governmental organisations? What about access to UNHCR?
- Is UNHCR notified about each new arrival of asylum seekers into the host country?
- Does NGO personnel have unhindered access to all asylum seekers at all stages of the procedure? What about UNHCR?
- Is the personnel (interpreters, police officers, inspectors, medical doctors, social workers) appropriately trained for work with vulnerable groups?
- Is special treatment of members of vulnerable groups provided for? What kind?
- Are guardians of minors present at the initiation of the procedure?
- Can the asylum seeker reapply for asylum based on changed circumstances?
- Is the principle of non-refoulement respected or not? (i.e. are people returned to countries that do not meet the criteria for a safe third country?)

5.3. Protective Measures

- Is inspection provided for in the asylum procedure? How?
- What are the appellate procedures like (independence, procedural guarantees, suspensive effect)?
- Are disciplinary procedures provided for, when and how (what type of behaviour is sanctioned, who sanctions it, procedure, possibility to appeal)?
- Are remedies provided to ensure responsibility and redress violations?
- Are different categories of (potential) asylum seekers separated?

5.4. Conditions

- Which are the main entry points at the green border?
- Which are the existing and planned detention centres?
- What are the maximum capacities and average monthly occupancies of accommodation and detention centres?
- How frequently are meals served? What is their quality? Are warm meals served as well? Can food be obtained outside the schedule of official meals? Are religious convictions and medical diets respected?
- What is the accommodation like? Are vulnerable groups accommodated separately? Are accommodation areas large enough? How are families accommodated? Can they open the windows by themselves? What is the lighting of the room like? Are house rules in accordance with the law?
- What are the sanitation facilities like? Are there enough of them? Are they clean? Are they separated?
- Are the conditions provided for appropriate personal hygiene? Are appropriate clothes provided? For vulnerable groups and people with special needs as well?
- Is psycho-social assistance provided? Are the needs of vulnerable groups taken into account?
- What are the living conditions for detained persons in a gender/age perspective compared to those who are not in detention?

5.5. Activities

- What options for work do asylum seekers have inside and outside the facilities? Is the work voluntary or paid?
- What religions are represented? Do they have access to religious representatives and can they carry out religious activities?
- What are the possibilities for free movement?
- What are the possibilities for recreation, education and outdoor activities?

5.6. Health Care

- Which health care rights are secured? Do they include assistance by psychiatrists or psychologists?
- How is transmission of transmissible diseases prevented?
- Is a medical doctor present at all times and what access to medical services is provided?
- Is appropriate care provided for vulnerable groups and for people with special needs?

5.7. Personnel

- Is sufficient personnel, dealing with asylum seekers, available?
- Is the personnel appropriately trained? Is additional training provided for?
- Is the operation of the personnel adequate? Are they available?
- Are border guards/police officials on duty gender-balanced?
- What are the language abilities of the personnel?

5.8. Capacity Building Activities

- What is the availability of PCs with internet access for the border guards?
- What are the training activities on asylum/migration related issues in a gender/age perspective underwent by border guards/police officials (subjects, frequencies, organizers, facilitators)?
- What language training courses for the border guards are attended and planned?

5.9. Other

- What are the internal rules of detention facilities? Are they accessible to detainees? Are they gender/age sensitive?
- Is there access available to recorded statistics? Does available data include a breakdown by gender, age and nationality with respect to unlawful resident migrants intercepted, including asylum seekers?
- What is the quality of information leaflets on the asylum procedure that are made available to persons in need of international protection (effective availability, translation in various languages, gender and age specific, etc.)?
- Are NGO monitoring reports shared with border guards/police department?

Numerous international and regional standards are in place to prevent abuse and violations of the aforementioned circumstances (see Chapter 1) and monitoring serves as a tool for their proper implementation.

6. Monitoring Planning

Before a border monitoring mechanism is established several questions must be answered by an NGO that will be performing it, in order to find out if a border monitoring mechanism can be established at all and what methods can be used considering the existing capacities. For examples of such questions see Appendix 1 (Questionnaire).

Monitoring must be planned. Various ad hoc activities, one time or occasional visits or missions are not considered monitoring. Initially, there is no need for the authorities to be engaged in the planning. The NGO ready to perform border monitoring must first assess its capacity, especially personnel and funds available for the action. It depends on these elements how often the NGO would be able to visit

the locations (for more detailed assessment instructions see below section Basic Conditions). Further in the process of planning the state or local authorities must be included and consulted. Since monitoring is implemented on locations under their authority they must be informed about the action and must be acquainted with the activities that will be carried out. Some monitoring mechanisms require active involvement of the authorities (e.g. informing the NGO representatives on duty about the new arrivals or apprehended persons) and in such cases the mechanism must be planned jointly with them.

In general, NGOs should have the right to exercise surprise visits at any time and on any day. If this right is specifically stated in the legislation, then agreeing upon the schedule between the parties should not be a condition for exercising the monitoring – it can only be a sign of good cooperation and good faith between the parties. On the other hand, if the right to carry out surprise visits is not specifically stipulated in the legislation or if monitoring is to be exercised in areas of confinement (e. g. detention centres) an agreement on the schedule may be necessary. While surprise visits are appropriate on locations where (potential) asylum seekers are always accommodated or detained, they are, however, not at all useful for locations such as police stations where (potential) asylum seekers are kept for shorter periods of time after being captured by the local police unit. This way it could easily happen that the NGO representative would never visit the particular police station where potential asylum seekers were brought in on that day.

Ideally (as it was already mentioned above), both parties would conclude an agreement on understanding, defining ground rules and principles of cooperation. The agreement can be concluded either in a form of a memorandum of understanding or with an exchange of letters between an NGO and the authorized officials of the border guards/police department. The memorandum or the letters should be signed by the authorized representatives of both parties.

The agreement should contain all the provisions necessary for the implementation of the action. The purpose of the agreement is to define the rules of cooperation and foresee the problematic areas of possible disagreement. The agreement should contain at least the following provisions:

- a commitment of the authorities of the country to comply with its international obligations;
- duration of its validity and modalities for its renewal or cessation;
- provisions on both parties' roles and responsibilities;
- information on permitted activities;
- determination of the number of NGO accredited staff (and its modalities);
- NGO staff commitment to comply with the security instructions of the border guards/police officials (and its modalities);
- NGOs' staff code of conduct (see Appendix II).

Monitoring must be **systematic** which means that it must be carried out in accordance with a certain schedule and on regular basis. Schedule can mean that visits either take place on certain days of the week or that all locations are visited at least twice (or three, four or more times) per month. The monitoring must be exercised on all relevant locations and must include all relevant beneficiaries. The

implementation of the monitoring must be carried out in accordance with an adopted scheme (a detailed methodological plan), defining:

- locations,
- personnel,
- activities,
- questionnaires and forms to be filled in, and
- reporting duties of the personnel.

It is important that monitoring is exercised in **all locations where the beneficiaries are accommodated or otherwise present**. E.g., if all asylum seekers are not accommodated in accommodation centres and a few of them remain in centres for foreigners (illegal migrants) even after applying for asylum, then monitoring must be carried out in the centre for foreigners as well. When it comes to migrants, these locations are often difficult to determine.

The idea is to monitor the situation of (potential) asylum seekers at the border and at their first contact with the border guards or state or local authorities. The question is: **What can be considered as a border?** The border in “border monitoring” is not only a territorial line between two states. It also involves accommodation and detention premises at the border, police stations, airport transit zones, sea ports, centres for foreigners, and accommodation centres for asylum seekers. The ideal border monitoring mechanism would be exercised on all of these locations. However, due to the lack of capacity of the NGOs, all stated locations would be difficult to manage, therefore the NGOs would need to focus on only a few of them. Usually, it would be difficult to set up monitoring on all of the premises of the border guards in larger countries and countries with long borders.

Selecting the right locations also depends on the **national legislation and on official data** on where are the (potential) asylum seekers most frequently captured and where are they brought after that (if they do or do not express their intention to apply for asylum). E.g. if there are only a few points on the green border where entry into the country is physically possible because of the geographical terrain the NGOs will not need to monitor the facilities along the entire border. Also, if certain routes across the country are more popular and therefore more frequently used, monitoring should focus or at least concentrate on them.

There are certain stages of the border procedure that the NGOs can be prohibited from monitoring (e.g. physical examination). However, all such situations and stages must be exclusively enumerated in the agreement on cooperation. On no other occasion can the border guard prevent the NGOs from exercising their activities. The NGO can be prohibited by the authorities to exercise its activities if it breaches the agreement.

In order for an NGO to **assess its capacity** and begin with planning the border monitoring mechanism, the following steps should be taken and questions answered (see also Appendix 1: Border Monitoring Questionnaire):

6.1. Basic Conditions

6.1.1. Establish the profile of the NGO seeking to begin with monitoring.

- What is its mission, its vision?
- What are its objectives arising from the strategy or operational action plan?
- What methods, procedures and activities is it using to fulfil its objectives?
- What falls within its competence and what are its areas of work?
- Is it independent? If not, how can it achieve and ensure its independence?

6.1.2. Establish which resources the NGO seeking to begin monitoring has at its disposal and which ones must it still obtain.

- What is the number of its personnel?
- What are its finances like?
- Is appropriate equipment available and are suitable tools available?
- What knowledge does it possess?
 - personnel with legal knowledge;
 - personnel capable of providing counselling (psychological and social);
 - personnel familiar with political process and capable of lobbying;
 - personnel with excellent communication skills (with asylum seekers, official personnel, the public, the media);
 - personnel capable of fundraising;
 - personnel with good knowledge of international procedures, the law and organisations;
 - personnel with knowledge of information technology;
 - personnel with good training skills;
 - personnel with research and analytical skills;
 - personnel with excellent networking skills.

If you establish that one of the above-listed skills or tools necessary for an effective implementation of monitoring is missing, this has to be remedied. For this purpose you can:

- hire new personnel;
- engage professionally trained volunteers or members;
- raise funds;
- cooperate with outside (publicly influential and recognized) experts;
- apply the advantages of networking.

The profile of the personnel is important for successful border monitoring. Ideally, experts with university degree in social, legal, forensic, psychological or medical studies are most welcome but also require higher financial resources. Students are an affordable alternative; it is, however, advisable that they are at least in their fourth year of studies. Regardless of which profile of the personnel is selected to perform the border monitoring, previous experience in the field of human rights is necessary. In addition, before they start to perform the activities they need to receive training on asylum law, border procedures, border monitoring methodology and code of conduct.

6.1.3. Determine the priorities of the NGO seeking to begin with monitoring.

- Which categories of asylum seekers with regard to sex, vulnerable groups and age (e.g. minors, victims of trafficking, women) has it dealt with in the past and in what way?
- Which activities were carried out most often and best? How (with which tools)?
- What kind of contacts does it have with other NGOs, governmental bodies, the media and the public?
- What other NGOs are also active in this area? Why, how, to what extent, where and for whom? Is there a possibility for complementary supplementation?
- What is the social-geographical criterion and do any regional problems and characteristics exist? How can they be used (networking, findings and solutions by other international (non-governmental) organisations and their experience)?

6.2. Networking

Networking constitutes an important part of a strategy for effectiveness. This involves primarily mutual cooperation and establishment of working relationships with other NGOs, state bodies, various institutions and international organisations indirectly or directly involved with the border or asylum procedure or asylum seekers.

Cooperation with other organisations can have **several forms or levels of intensity**:

- exchange of information;
- joint action in individual areas;
- complementary action achieved through division of working areas or through the political/operational support of other organisations;
- coordination of individual areas by defining common objectives and standpoints; and
- partnership in programmes.

Networking has many **positive effects**. It:

- reduces the probability of duplication of efforts;
- reduces the probability of duplication of costs;
- reduces the probability of competitiveness in applying for funds by submitting similar projects which makes up for the lack of resources and skills; and
- improves effectiveness, professionalism, publicity and identity of monitoring.

In networking, it is therefore necessary to establish which national and international (non-governmental) organisations can, with regard to their profile, resources and priorities, represent potential partners in the execution of monitoring in asylum procedures.

This can be:

- another national non-governmental organisation;
- another international non-governmental organisation (e.g. Amnesty International, Oxfam);
- a humanitarian, religious or other non-governmental organisation (e.g. ECRE);
- an independent institution (e.g. ombudsman);
- a regional organisation (e.g. the Council of Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment);
- an international organisation (e.g. UNICEF, UNHCR).

7. Monitoring Programme and Execution

In setting up the monitoring programme and its execution, the following must be provided for:

- specify the locations where monitoring will be carried out regularly and continuously;
- establish whether you possess sufficient information on the selected location;
- establish whether you possess sufficient information on the local representatives of the authorities and personnel;
- establish whether you possess sufficient information on any potential issues;
- specify the target group or individual cases that will be followed constantly;
- specify a detailed monitoring plan:
 - what type of resources and in what extent are necessary for execution of monitoring;
 - is training necessary;
 - objective of monitoring;
 - mode of execution;
- specify the manner of processing information obtained through monitoring;
- internal and external reports;
- media releases;
- setting up a research;
- communication with others.

At this point, it is important to realize that only **independent** monitoring performed in accordance with high professional standards can provide credible and focused information, which can serve as high quality and adequate arguments in campaigns conducted by NGOs or provide assistance to individual asylum seekers. In using information for this purpose, the most important problems must be highlighted, solutions must be proposed and the short, medium and long-term time limits must be set for taking measures depending on the collected information.

In order to ensure its effectiveness, independence and professionalism in the execution of monitoring, it is necessary to follow a certain **code of conduct**, including rules, such as:

- all asylum seekers and all personnel are treated equally;
- the rules of communication between those who perform monitoring are clear;
- respect is paid to asylum seekers and personnel (e.g. agreements must be reached with the responsible persons);
- information obtained in individual interviews, visitations and documents is verified at other state authorities, institutions, non-governmental organisations, media or the asylum seeker's family;
- all activities are in line with the law and criminal or unethical activities have to be avoided;
- no false promises are made;
- conflict of interests should be avoided;
- safety as a necessary condition of a border monitoring mission should be promoted;
- persons executing monitoring should be clearly recognizable (wear a tag or a visible mark and state their identity);
- an individual asylum seeker may be exposed only with his consent;
- confidentiality should be respected and regulations on personal data protection observed;
- possibility of access to information of public nature may be used;
- monitoring may mean both inspection of facilities and documents, and conducting interviews. In some cases it can mean only observing and taking notes. For more information see appendix 2 (Code of Conduct).

In the process of **collecting information** in the scope of performing monitoring, it is necessary to:

- establish a full identity of the asylum seeker;
- note the time and place of monitoring;
- note the present personnel or relevant employees;
- note a precise description of possible violation, infringement, circumstance, witnesses and identity of the person who ordered the action;
- establish and note who has already been informed of the event, what were the asylum seeker's options for appeal in the case (is it an independent body, what is the appellate procedure like, does the asylum seeker have all guarantees at his disposal) and what has already been done or achieved with regards to this.

8. Monitoring as a Starting Point for Other Activities

In view of their independence, NGOs can play an important role in monitoring and influencing the development of asylum policies and law. Their independent position allows them to inform state bodies of problems in the asylum procedure based on expertly obtained information and to submit recommendations for dealing with them. By expert research, data and practice collection and by developing adequate indicators, a non-governmental organisation can therefore **influence the formulation of adequate asylum policies and legislation**. A precondition thereto is good monitoring, which produces relevant and dependable information that serves as

the foundation for campaigns by non-governmental organisations and their provision of appropriate assistance to asylum seekers.

8.1. Assistance to Asylum Seekers

Even though the needs of the asylum seeker always come first, NGOs providing assistance to asylum seekers must firstly be aware of their (relevant) qualification, because not all organisations have access to all skills and tools (see “Monitoring Planning”). It is therefore essential that **NGOs do not attempt to do more than they are capable of or qualified for.**

Taking into account their resources (knowledge, tools, networking, etc.), NGOs can provide various types of assistance:

- establishing a help line staffed by trained experts who record and monitor individual cases;
- provision of psycho-social assistance;
- connection with other victims;
- counselling and care for individual vulnerable groups or people with special needs;
- direction of asylum seekers to the appropriate institutions, organisations and authorities;
- provision of basic information on their rights;
- legal counselling in connection with their asylum procedures; and
- legal representation and legal aid.

There are several possibilities that non-governmental organisations choose from for the purpose of providing legal representation and legal aid:

- use of services rendered by lawyers working for NGOs;
- establishing relations with legal firms.

Such forms of cooperation can be either paid or pro bono. It is essential that these lawyers possess special knowledge. In such types of cooperation between NGOs and legal experts a strategy can be formed for the use of judicial proceedings, which must include clear criteria of setting priorities of urgent (with a good chance of the individual being subjected to torture or other forms of inhumane treatment if returned into another country) and strategic cases (lodging group or individual appeals at international bodies such as the European Court of Human Rights). When an NGO takes on a case, be it in cooperation with external lawyers or not, it is important that **the case is followed by this NGO until the final decision is issued.** Only this way can appropriate legal aid be provided, which can enable management and monitoring of the case from the national all the way to the international judicial bodies.

8.2. Campaign

A campaign is a sequence of events and actions strategically organised and planned with regard to available information and resources, whose purpose is to achieve effective pursuit of objectives and changes also in the development of asylum policies and legislation.

The fundamental principles of an effective campaign are:

- resources and actions focused on a clear objective based on accurate and reliable information obtained through monitoring;
- clarity of communicating objectives and actions related thereto;
- credibility arising from reliable and accurate information;
- relevance of offered solutions;
- a good campaign plan, including time schedule (see “Monitoring Planning”);
- dedication.

Campaign techniques represent an interconnected and organised complex of various activities designed for an effective fulfilment of the campaign’s objectives:

- research (general, case studies);
- raising awareness, training, education;
- lobbying;
- symbolic events;
- media and publicity;
- cooperation and networking;
- resource collection.

Appendix 1:

BORDER MONITORING QUESTIONNAIRE

This questionnaire should be answered in detail by any NGO that wishes to engage in border monitoring.

GENEVA CONVENTION & NATIONAL ASYLUM LEGISLATION

1. Is your country a signatory of the 1951 Geneva Convention?
2. Does the legislation of your country define any refugee status determination procedure?
 - a) If yes, in which act? Could you please provide us with a copy of this act? Who is an asylum seeker as defined in the act?
 - b) If no, how does your country determine a refugee status of a person? Are there any other administrative procedures or acts in use? If yes, could you please provide us with a copy of these acts?

STATE BODIES & UNHCR & NGOs

3. Which state body is competent for refugee status determination procedure or other procedure used when a person claims to be persecuted and is in need of protection (Refugee Status Determination authority - RSD authority)?
4. What is the role of the (Border) Police in regard to the asylum seekers? Which measures (identification, fingerprinting, etc.) are carried out? On which legal basis are these acts carried out (i.e. which act defines the Border Police procedure)?
5. Are asylum seekers given the opportunity, at all stages of the procedure, to communicate with UNHCR or with other refugee organizations which may be working on behalf of UNHCR in your country?

ACCOMMODATION & ACCESS TO FACILITIES

6. Where are asylum seekers who seek asylum at the border accommodated? Is the facility within the competence of the RSD authority or within the competence of the (Border) Police? What about asylum seekers at seaports or at airports?
7. Are these asylum seekers transferred to another facility after lodging the application for asylum? Under which authority does this facility fall?
8. Does UNHCR have access to such facilities? If yes, which act defines the right to access?
9. Do NGOs have access to such facilities? If yes, which act defines the right to access?
10. Is the access unlimited or limited? What are the limitations?
11. Are NGOs and UNHCR visiting facilities after being notified about new persons being accommodated or at their choice?

TIME LIMITS

12. What is the time limit in which the asylum seekers have to lodge an application after entering the country? Where do they wait in the meantime? Are there any facilities at the border?

13. In case the asylum seekers are transferred to another facility after lodging the application, what is the time limit in which they have to be transferred? Is the time limit defined by an act and if yes, which act?
14. In case the border police accepts the application, in what time limit do they have to forward this application to the competent authority for examination?

PROCEDURAL GUARANTEES

14. Are persons who illegally enter the territory punished or fined for illegal crossing? Are they fined even if they claim to be persecuted and seek asylum?
15. What is the procedure if a person at the border wants to lodge an asylum application? Is any asylum seeker at all afforded an opportunity to lodge an asylum application? Who accepts it? The border police or other authority? Is there an interpreter present? Is interpretation free of charge?
16. Do the asylum seekers have the right to call in a legal adviser or other counsellor to assist them during the procedure?
17. Do the responsible authorities provide applicants with information on organizations or legal advisers (if they exist) that provide specific legal assistance? Is the information provided in writing and in a language understandable for the applicant?
18. Are asylum seekers at the border given any information? Which? Is the information provided in writing? In what language?
19. Do the responsible authorities immediately inform asylum applicants of their rights and obligations which they must comply with relating to the reception conditions?
20. Are asylum seekers allowed to remain in the state (at the border or transit zones) until the determining authority has made a final decision on the application?
21. Are asylum seekers interviewed in relation to their application for asylum (before the competent authority takes a final decision) by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law?
22. In case a permission to enter is refused by a competent authority, does this authority state reasons why the application for asylum is considered unfounded or inadmissible? Is this statement made in writing and in a language understandable for the applicant?
23. Are asylum seekers detained at the border? On what grounds?
24. In what situations (under what conditions) is an asylum seeker taken back to the country of origin?

EDUCATION

25. Do border guards undergo regular trainings and qualification checks on issues related to the asylum procedure?
26. Are the RSD authorities fully qualified in the field of asylum and refugee matters? Do they have at their disposal specialized personnel with the necessary knowledge and experience in the field of asylum and refugee matters?
27. Is there any code of conduct on issues related to the asylum procedures established which instructs border guards how to act in specific cases?

VULNERABLE GROUPS

28. Does your legislation include more favourable provisions regarding vulnerable groups (single women, unaccompanied minors, older people, victims of torture and violence, etc.)?
29. Does the border police endeavour to involve skilled female employees and female interpreters in the asylum procedure where necessary, particularly where female asylum seekers find it difficult to present the grounds for their application in a comprehensive manner because of the experiences they have undergone or because of their cultural origin?

Appendix 2:

CODE OF CONDUCT FOR CONDUCTING BORDER MONITORING

Adopted at the First Regional Forum on border monitoring /networking: a role of NGOs, 19-12 April 2004, Trakai, Lithuania

- All actions by any stakeholder involved in the monitoring of the border should be taken in good faith.
- All protection activities must be done in line with existing agreement of understanding.
- NGOs monitoring teams have to apply the highest professional standards and respect the obligation of the Border Guard to protect the state border.
- NGOs should strive together with the Border Guard to find possible solutions to protect gaps emerged during the border mission (constructive criticism)
- The finding of the border monitoring mission should be openly disclosed to the public. Prior to this action mutual consultation between the parties should take place.
- Monitoring NGOs team members should be above all suspicion – standards as applicable to UNHCR staff apply here (see page 14).
- Focus of NGOs activities should be on humanitarian role, rather than control.
- NGO member should sign a declaration of confidentiality.
- Only non-profit NGOs should be involved in the border monitoring activities.

Chapter V:

**EXAMPLE OF A GOOD PRACTICE: SLOVENE AND OTHER
POSSIBLE MODELS**

By Sonja Sikošek

I. Slovene Model

1. Purpose of Border Monitoring

The main objective of border monitoring is to **ensure unimpeded access of asylum seekers to the territory and also to asylum procedures**, by ensuring that appropriate safeguards are provided to the persons that are in need of international protection, safeguarding them from measures amounting to refoulement. Consequently, constructive cooperation of all the relevant actors should lead to increased transparency and quality of border procedures in general. In Slovenia, border monitoring is carried out by an NGO Legal Information Centre for NGOs – PIC (hereinafter: PIC).

2. Legal Framework

International legal framework:

- The Universal Declaration of Human Rights, Article 14 gives everybody a right to seek and to enjoy in other countries asylum from persecution;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 (Prohibition of Torture) defines that no one shall be subject to torture and inhuman or degrading treatment or punishment;
- The Convention Relating to the Status of Refugees (Geneva Convention): Article 31 prohibits contracting states to impose penalties for illegal entries or presence of refugees who have directly come from a territory where their life or freedom was threatened in the sense of Article 1, and who enter or are present in their territory without authorisation, if they presented themselves without delay to the authorities and show a good cause for their illegal entry or presence;
- The Convention Relating to the Status of Refugees (Geneva Convention): principle of non-refoulement – Article 33 prohibits contracting states to expel or return a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

European legal framework:

- see Chapter 1 on International Protection and European Union Legislation in the field of asylum.

Slovene Legal Framework:

- **Asylum Law** (as amended in 2006) introduced a provision defining a Police pre-procedure, giving the Police an authorisation to identify a person as an asylum seeker or as a foreigner when grounds for granting refugee status are not visible from person's statement or when no statement is given by the person. Those grounds are to be established by the border Police in cooperation with a competent asylum authority (the Asylum Section at the

Ministry of Interior). The procedure is not considered as the refugee status determination procedure (RSD). The provision applies only to persons illegally entering or residing in the territory of the Republic of Slovenia. In March 2006 the provision was challenged by the Constitutional Court which temporarily suspended implementation of the provision until the final decision of the Constitutional Court is issued. According to the Constitutional Court order, in the meantime, the Police shall immediately send a foreigner, who illegally enters or illegally resides in the Republic of Slovenia and expresses an intent to seek asylum, to the Asylum Home and submit filed application or official record of his statement and other relevant data without delay to the competent authority.

When asylum seeker applies for asylum in the transit zone at an airport or on a ship in a harbour, the Border Police have to, in cooperation with the competent asylum authority, determine in 48 hours whether the persons' statement includes the ground for international protection.

Very important provision of the Law on Asylum is also the provision on respect of the principle of non-refoulement, defining that forced deportation of persons to a country where their life or freedom would be threatened or to a country where they could be exposed to torture or inhuman and degrading treatment or punishment is not allowed.

What the border monitoring amounts to, depends on the interpretation of when a person is considered to be an asylum seeker. The Slovene authorities, United Nations High Commissioner for Refugees (UNHCR) and the relevant NGOs have a different standpoint on this issue.

According to the interpretation of the Ministry of Interior, a person is an asylum seeker only after he/she has formally lodged an asylum application, introducing unknown category of persons in need of the international protection in the international legal framework – a person who expressed intent to seek asylum. The Ministry of Interior is of an opinion that such an interpretation clearly derives from the Article 1¹⁴ and Article 7¹⁵ of the Asylum Law. UNHCR and NGOs acting in the field of asylum disagree with the Ministry's standpoint, explaining that an asylum decision is of declaratory nature, meaning that person with formally determined refugee status has been a refugee, and thus an asylum seeker, since the reasons for persecution occurred and not only after the asylum application was formally lodged with the relevant authorities which is also the interpretation of the Geneva Convention. In this regard, as it will be explained below, the border monitoring in Slovenia extends also to the Centre for foreigners and to the pre-reception area of the Asylum Home where persons with expressed intent to seek asylum are accommodated until the asylum application is formally lodged.

¹⁴ "Asylum applicant" is an alien who has submitted an asylum application and is considered as such from the moment of the submission until the adoption of the final decision.

¹⁵ An alien who upon entry in the Republic of Slovenia declares his/her intention to submit an asylum application in the Republic of Slovenia shall be treated as an asylum applicant in accordance with this Law and he/she must be allowed to enter the State.

- **Aliens Law** defines the procedure of return and expulsion of a foreigner illegally entering or residing in the Republic of Slovenia, including the respect of the principle of non-refoulement. A special treatment, respecting the international legal framework (Convention on the Rights of the Child etc.), is foreseen for the unaccompanied minors.

3. Examples of a Good Practice in the Republic of Slovenia

3.1. Pre-Reception Area of the Asylum Home

Asylum seekers that have just arrived in the Asylum Home and have not yet undergone the medical check are accommodated in the pre-reception area of the Asylum Home. After the medical check is done, lodgement of the asylum application and accommodation in the reception area of the Asylum Home follows. The PIC's activities in the pre-reception area are carried out under the auspices of the UNHCR Regional Representation in Budapest.

In order to have a contact with as much asylum seekers as possible, PIC is present in the pre-reception area of the Asylum Home twice a day – in the morning and in the afternoon. Besides monitoring of the reception conditions we provide the necessary information for asylum seekers,¹⁶ **explaining their rights, duties and the course of asylum procedure**. Asylum seekers in the pre-reception area have to sign a declaration stating that they are aware of the fact that leaving the premises of the Asylum Home means that they have neither the wish nor the intention to apply for asylum in the Republic of Slovenia. Therefore, PIC puts a lot of effort in explaining to them what they signed, because the declaration is still not available in all the relevant languages and above all it is rather hard to comprehend.

In the pre-reception area PIC also carries out the border monitoring activities, asking the asylum seekers about their **experiences with the Police and police procedure** (the procedure of registering asylum seekers, access to the asylum procedure, presence of interpreter and legal advisor, etc.). PIC representatives also ask them which country they arrived from, where they asked for asylum (at a border, at a Police station or at the Centre for Foreigners) and how they came to the Asylum Home.

Until recently PIC was not facing any major obstacles in implementing its activities. Now, the Asylum Section raised a concern over PIC's presence in the pre-reception area, because of the contact with the persons who had not yet undergone the medical check. Therefore, PIC agreed to meet all the necessary medical standards to continue to be present in the pre-reception area instead of adopting their proposal of having contact with those persons only after they have undergone the medical check and before they lodge an asylum application.

¹⁶ Asylum seekers used to obtain these information in the so-called information sessions performed jointly by the employers of the Asylum Home and the representatives of PIC. The Information sessions were unilaterally cancelled without explanation in May 2005 and PIC had to find a different way to provide information.

3.2. Centre for Foreigners in Postojna

Foreigners that came into the Republic of Slovenia illegally or are illegally staying in Slovenia, and cannot be immediately deported or removed to a country they have arrived to Slovenia from or to a country of origin, are accommodated in the Centre for Foreigners.

Asylum seekers are accommodated in the Centre for Foreigners only when:

- Their movement has been limited,¹⁷
- Capacities of the Asylum Home are overcrowded,
- They lodged new asylum application after their asylum procedure was final.¹⁸

In accordance with the agreement among the Centre for Foreigners, PIC and UNHCR, the representatives of PIC visit the Centre for Foreigners twice a week. At first, PIC was granted access only to those asylum seekers who wanted to have a contact with this NGO, but from March 2006 on it has access to all asylum seekers and to those foreigners who expressed a wish to speak with PIC representatives. They can express this wish to inspectors who then inform PIC or through contacting PIC directly via a mobile phone established especially for this purpose. In these cases PIC informs the inspectors that they will visit those foreigners.

Asylum seekers and foreigners are **provided with legal information and counselling on their individual case**. PIC also prepares legal documents such as appeals, requests for milder measures, request for permission to stay in Slovenia and other legal motions, if needed and desired. Asylum seekers are particularly interested in the reasons for restriction of movement, its maximum duration, and length of the asylum procedure or the procedure for their deportation. The most serious problem we detect in the Centre for Foreigners is **the lack of information provided to persons** accommodated there, even if they have legal counsellors.

Through the interviews with the detained asylum seekers and foreigners, PIC obtains **information on persons' experiences with the Border Police** as in the pre-reception area (see above) and **the possibility to apply for asylum**. This information is very important since most of the asylum applications lodged in the Centre for Foreigners are rejected as manifestly unfounded, which means that the asylum authorities decide on the application in the accelerated procedure, without considering the merits of a case. The lawful reason defined in the Law on Asylum for carrying out an accelerated procedure is that the person is abusing the asylum

¹⁷ According to the Article 27 of the Asylum Law, the movement can be temporarily limited on the grounds of establishing the identity of the asylum seeker, preventing the spread of contagious diseases, suspicion of misleading or abusing asylum procedure, preventing the threat to other persons' life or property.

¹⁸ The asylum applicant whose claim was already rejected in the Republic of Slovenia may file a new one only if he/she submits evidence proving that the circumstances which gave rise to the previous decision have significantly changed. If he/she fails to do so, the asylum authority shall reject the application without starting a new procedure.

When an application is lodged on the basis of the first paragraph of this Article, **an alien** who is in the procedure of forced deportation or an alien who has not left the Republic of Slovenia shall be placed with the authority competent for deportation from the country.

procedure. According to the Asylum Section's practice, applying for asylum in the Centre for Foreigners *per se* amounts to abusing of the asylum procedure, with the reasoning that the sole reason of applying for asylum is to postpone their deportation. Therefore, it is very important to find out whether the persons have the possibility to apply for asylum with the Border Police and at the Centre for Foreigners and how long does it take to formally lodge an asylum application.

One of the problems PIC is facing is not having access to all the foreigners accommodated in the Centre for Foreigners, which is planned to be resolved with the implementation of an additional border monitoring project, explained below. During the implementation of the project some other minor problems occurred, e.g. the misinformed inspectors who did not want to grant PIC access to the foreigners who contacted them directly, but this issue was later resolved.

In addition, PIC had **problems with unimpeded access** to the asylum seekers as well. According to the Police's interpretation of the agreement reached between the Centre for Foreigners, UNHCR and PIC, the modus operandi of the access to the asylum seekers has not been defined in details, thus alleging that full access may also mean that the asylum seekers are brought to the interview room. In the opinion of PIC full access means that the NGO representatives are able to visit asylum seekers at the accommodation part of the Centre for Foreigners, since this is the only way to ensure access to all the asylum seekers – how can an NGO representative be sure that all asylum seekers have been brought to the interview room by the inspectors? This issue was then solved in cooperation with the Asylum Section, which is also the responsible authority for those asylum seekers accommodated at the Centre for Foreigners. On regular basis, they are sending us statistics with all the data needed to verify whether we are granted access to all the asylum seekers.

In general, PIC has had **positive experience with the inspectors and other staff** in the Centre for Foreigners. Occasionally, they approach PIC with information on an individual case and ask the organization to help a person with a legal advice or legal motions.

3.3. Border Monitoring Project

3.3.1. Background

In accordance to the UNHCR regionalisation process in Hungary, Poland, Slovakia and Slovenia, carried out by the UNHCR Regional Representation in Budapest, a Slovenian NGO PIC, due to the regional operational plan and standards, started with the implementation of the border monitoring project in August 2006. It is important to note that Slovenia is an EU external border State and will soon assume full Schengen border responsibilities.

The project has already been agreed with the Minister of Interior, and operational meetings with the Border Police have already taken place. Important information when defining all the elements of this project were also experiences gained during the UNHCR's direct implementation of border monitoring project in 2004, which is, according to an opinion of the Border Police and UNHCR, an example of a good

practice in the field of border monitoring activities. Unfortunately, at that time the Police did not agree with the involvement of an NGO, but rather preferred UNHCR's direct involvement, therefore the current pilot project that is carried out by PIC is a model project with an initial duration of six months.

3.3.2. Objectives

The main objective is to ensure that appropriate safeguards are provided to persons in need of the international protection, thus enhancing fair and efficient asylum system, and build trust between the Police and NGOs in Slovenia working on asylum related issues.

3.3.3. Beneficiaries

The primary beneficiaries of the project are persons in need of international protection illegally crossing the Croatian-Slovene border and other persons legally and illegally entering the territory of the Republic of Slovenia. Other beneficiaries are Border Police, Slovene NGOs and consequently also the Republic of Slovenia. The mutual cooperation between the Border Police and PIC improves the quality and transparency of the border monitoring procedures in line with national and international protection standards, ensuring that persons in need of international protection have access to both the territory and the national asylum procedures.

3.3.4. Geographical scope and scope of activities

The project focuses on the eastern border with Croatia – a border where most illegal crossings take place and where illegal migrants are mostly processed within accelerated readmission procedures (i.e. are returned to Croatia) in accordance with readmission agreement between Slovenia and Croatia.

With regard to the Police experience and experience of UNHCR gained in the pilot project, most of the illegal migrants and asylum seekers do not enter Slovenia directly at border points, but at the green border. Therefore, PIC formed groups of people covering Slovene regions, according to the organisational structure of Police Directorates, where entrances are most frequent. Consequently, the border monitoring will be implemented at:

- police stations under the Police Directorates Postojna, Ljubljana, Koper, Krško, Murska Sobota and Maribor,
- main Land Border Entry Points with Croatia,
- main International Airport Entry Point Brnik,
- main International Sea Port Koper,
- detention Facilities in the Centre for Foreigners in Postojna.

3.3.5. Methodology

Persons working on the project are available 24 hours a day from Monday till Friday. Police stations inform a person on duty, via phone, on all persons entering the Republic of Slovenia illegally and on all asylum seekers. A member of the team then

immediately visits the Police Station, which intercepted illegal migrants or asylum seekers in order to observe proceedings of individual cases.

The border monitoring project focuses on:

- monitoring the actual procedure, protocol and methods of work being used by the Border Police to facilitate entry to the territory and the access to the asylum procedure with due regard to the nexus between the role of the Border Police and the competent asylum authority - Asylum Section;
- monitoring the implementation of bilateral readmission agreements with due regard to the legitimate aim of the Border Police to have efficient Border management.

In order to effectively implement the project, cross-border element of teaming up with neighbouring countries' NGOs is introduced in the project, to exchange relevant information, track individual cases and to work closely on enhancing the unimpeded access to the territory and asylum procedure.

Considering the above defined methods of work PIC is obtaining the following **statistics** on the persons intercepted on the border including the age, gender, nationality and country of origin breakdown:

- number of refused entries,
- number of illegal entries,
- number of persons returned to neighbouring countries (readmission agreements),
- number of asylum applications (differentiation between legal and illegal entries),
- destination country of those persons.

After a month of implementation, **an evaluation meeting** with the following participants: Legal Information Centre for NGOs, UNHCR, the Police and a representative of the asylum authority has taken place, with an aim to exchange the experiences and apply them as modifications to further implementation of the pilot project.¹⁹

II. Other possible models

1. “Söderköping Process”

Models that can be found in other European countries and which could be a model of a good practice have been predominantly initiated by the UNHCR and are involving a cross-border element with established cooperation forum. For example, in 2001 UNHCR and Swedish Migration Board initiated establishment of such a forum called “Söderköping Process”, to promote dialogue on asylum and irregular migration among countries along the future external EU eastern border focused on common

¹⁹ The evaluation meeting took place just after this Article was written. Therefore, details of the evaluation meeting and experiences gained in the pilot project are going to be presented at the oral presentation in November 2006.

border management concerns, including various levels of migration control. This forum is a relevant meeting place for discussions on NGOs' border monitoring activities in the Central European countries.²⁰

1.1. “Uzhgorod Process”

Hungary, Ukraine and Slovakia implemented joint pilot border monitoring project in 2005, which was commissioned by UNHCR Regional Representation in Hungary. Those countries initiated a parallel process called “Uzhgorod Process” within the Southern Cluster framework of the Söderköping Process. The major achievement of the latter was a meeting, where three NGOs from the participating countries analyzed jointly with the authorities the developments on the state of affairs to find better ways of efficient border management. At the meeting, all the participating parties reached an agreement that NGOs' presence at borders within the joint border monitoring system should encompass, among support in health and social related matters, also activity of pro bono legal counselling to asylum seekers. The conclusion of the discussions and activities held within the Cross Border Cooperation Process (SBCP) was that border monitoring arrangements are useful as a “soft control tool”. One of important contributions of the SBCP was the responsibility of its Secretariat to collect and distribute best practices among involved participants. Those border monitoring activities resulted in closer work in general and especially on individual cases and exchange of experiences which contributed to higher efficiency of the border monitoring.

1.1.1. Details on Border Monitoring Project implemented by the Goodwill Society, Slovakia

- Objectives:
 - Monitoring access to the asylum procedure (with focus on the vulnerable groups);
 - Monitoring of the arrival of the identified asylum seekers to the refugee centres.

The need for special attention of vulnerable categories of people was perceived from the data obtained from the Border Police. When needed individual monitoring of a person's case was conducted. Groups where women and children were present were always monitored; therefore early identification of needs has been carried out and addressed.

- Leading principles of border monitoring project were:
 - NGO is in direct contact with the Director of the Alien and Border Police;
 - Yearly evaluation meeting between the Alien and Border Police and NGO;
 - NGO's flexibility to be present and provide direct assistance to vulnerable cases;
 - Agreement signed between the involved parties;

²⁰ Those countries are: Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia, and Ukraine.

- Information brochure available to the Alien and Border Guards;
- Step by step conduct in processing cases regarding separated children;
- 24 hour hot line available at the NGO.

➤ Methodology:

Alien and Border Police informed the UNHCR by fax and NGO via phone on a daily basis on persons that were detained and identified as illegal migrants. UNHCR forwarded the fax to NGO, who monitored the particular case – the focus is on access to the asylum procedure, presence of interpreter, moving the person to the refugee centre, addressing any humanitarian needs that person may have that can not be accommodated by the Alien and Border Police with a focus on the vulnerable categories. In the cases of unaccompanied minors, Alien and Border Police directly contacted NGO to confirm the steps taken, and also contacted the NGO in cases of vulnerable cases identified during weekends and holiday.

1.1.2. Details on Border Monitoring Project implemented by the Lithuanian Red Cross Society, Lithuania

➤ Objective:

- Monitor access to the asylum procedure;
- Ensure that sufficient and objective information on asylum procedure is available at the border check points.

➤ Methodology:

- Data was summarised from questionnaires;
- Border check points were provided with information leaflets on existing asylum determination procedure;
- Legal counselling was provided to asylum seekers.

➤ Evaluation:

- Legal assistance activities have considerably increased;
- Legal activities covered:
 - Provision of legal consultations with asylum seekers at the border areas, at territorial Migration offices;
 - Participation at the interviews conducted by the officials of Migration Department at Refugee Reception Centre;
 - Submission of a written opinion concerning channelling of asylum cases to one of the procedures (accelerated or regular);
 - Opinion on protection needs of the asylum seekers.

Example of good practice is certainly the participation of lawyers in interviews with asylum seekers at Foreigners Registration Centre, in all interviews at the border within the territory, in cases of particularly vulnerable individuals, such as unaccompanied minors, single woman and traumatized individuals.

1.2. Regional Forum on Border Monitoring

In 2004, the “First Regional Forum on Border Monitoring/Networking: A role for NGOs in Trakai” took place, which is of a particular relevance to border monitoring. Many NGOs from the Central and Eastern Europe and Border Guard Senior Officers attended the forum. The objective of the Trakai Process was to enhance the refugee protection at entry points, to promote a better understanding between NGOs working in the field of refugee protection and Border Guard Departments. According to the understanding of participants, the NGOs border monitoring activities should focus on foreigners who applied for asylum at the border and that the protection role of NGOs should encompass legal and social assistance, medical help, psychological counselling and access to information regarding refugee status determination procedure, i.e. humanitarian issues. It was emphasized that NGOs should be allowed to monitor the borders, including detention facilities, transit zones and seaports. These activities should be implemented according to an agreed code of conduct and an agreement between NGOs and Border Police.

In addition, the basic principles of exercising border monitoring were established and it was agreed that NGOs should not interfere and obstruct certain stages of the general border procedure. However, situations in which Border Guards bodies can prevent the NGOs team from carrying out the border monitoring activities should be exclusively enumerated in the agreement of understanding. One of the conclusions of the Forum was also the importance of UNHCR impact on promoting the NGO border monitoring methodology which could enhance the protection standards for asylum seekers at the border and the fundamental importance of cooperation and consultation process between civil society organisations and competent authorities.

2. Future Perspectives

In this respect I believe that UNHCR's perspective to draw up a harmonised regional strategy in the European Union for standard border monitoring activities, including harmonisation of protection information gathering and information exchange system, harmonisation of protection actions and interventions using standard forms, joint training activities on border monitoring and to establish overall mutual cooperation among all the relevant actors (border Police and other state authorities, NGOs) in the region along the UNHCR's regionalisation process, will be of a huge importance at establishing a good practice in the future. However, the process of the border monitoring pilot projects shows that UNHCR plays a key role in the initial phase. Through the implementation, direct cooperation and partnership should be established with an NGO which is also a good perspective for more involvement of civil society in creating a good practice in the field of asylum systems.

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