

Guidelines on Temporary Protection or Stay Arrangements

1. PURPOSE OF THESE GUIDELINES

1. The purpose of these Guidelines is to guide and assist Governments in the development of Temporary Protection or Stay Arrangements (TPSAs) as responses to humanitarian crises and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate. The TPSAs described in this document would ideally be developed on a multilateral/regional basis, while requiring implementation at the individual State level. The benefits of moving away from unilateral, *ad hoc* responses to those that are multilateral, as well as more predictable and harmonized yet flexible, are well acknowledged. This document sets out the elements of possible TPSAs, preferably as a standing arrangement that can be activated in response to particular situations or events when they arise.
2. These Guidelines build on international consultations undertaken, *inter alia*, at two Roundtables on Temporary Protection in 2012 and 2013, which aimed to identify the scope and minimum standards of temporary protection/stay,¹ as well as an Expert Meeting on International Cooperation to Share Burdens and Responsibilities in 2011.² The Guidelines also draw from lessons learned from existing regional protection instruments and arrangements.³ An Annex is attached, providing an “at a glance” summary.

2. BACKGROUND

3. Temporary protection/stay arrangements are pragmatic “tools” of international protection, reflected in States’ commitment and practice of offering sanctuary to those fleeing humanitarian crises. TPSAs are complementary to the international refugee protection regime, being used at times to fill gaps in that regime as well as in national response systems and capacity, especially in non-Convention States.

¹ United Nations High Commissioner for Refugees (‘UNHCR’), *Roundtable on Temporary Protection*, 19-20 July 2012, San Remo, Italy, Summary Conclusions, available at: <http://www.refworld.org/docid/506d908a2.html>. UNHCR, *Roundtable on Temporary Protection*, 15-16 July 2013, Concept Note, available at: <http://www.unhcr.org/5284cf2b9.html>.

² UNHCR, *Expert Meeting on International Cooperation to Share Burdens and Responsibilities*, 28 June 2011, Amman, Jordan, Summary Conclusions, available at: <http://www.refworld.org/docid/4e9fed232.html>.

³ See, in particular, *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html> and the 1984 *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>; Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (“Bangkok Principles”), 31 December 1966, as adopted on 24 June 2001 at the AALCO’s 40th Session, New Delhi, available at: <http://www.unhcr.org/refworld/docid/3de5f2d52.html>; European Union: Council of the European Union, *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof*, OJ L.212-223 7.8.2001, 2001/55/EC (‘EU Temporary Protection Directive’), available at: <http://www.refworld.org/docid/3ddcee2e4.html>.

4. Temporary protection/stay has a long history as an emergency response to the large-scale movement of asylum-seekers, providing immediate protection from *refoulement* and basic minimum treatment. Over time other forms of temporary protection/stay schemes have been implemented as an appropriate response, including to humanitarian crises and complex or mixed cross-border population movements.
5. These types of population movements pose particular challenges to States and regions, such as the costs associated with hosting large populations, security concerns, and the orderly management of borders. These challenges are regularly shared within and sometimes across regions and, in the absence of an agreed common response, can lead to tensions between States arising from irregular onward movements and other factors.
6. Past practice has shown that multilateral responses in the form of cooperative arrangements are effective in addressing the many facets of cross-border movements, and lead to improved burden-sharing and protection of concerned populations and individuals.
7. TPSAs are especially relevant in regions where there are few States parties to the 1951 Refugee Convention relating to the Status of Refugees (1951 Refugee Convention) and/or the 1967 Protocol, or regional refugee or other protection instruments,⁴ or where these instruments are difficult to or do not apply because of the character of the movements.

3. COMMON UNDERSTANDINGS

8. TPSAs are guided by the following understandings:
 - Providing temporary protection/stay is a humanitarian and non-political act.
 - As part of a humanitarian response, TPSAs need to be flexible to react speedily to a crisis or disaster, while providing a minimum level of protection.
 - TPSAs contribute to a better managed global response system to humanitarian crises as well as complex and mixed cross-border population movements, centred on multilateral co-operation and an equitable sharing of burdens and responsibilities.
 - TPSAs, agreed at the multilateral or regional level, address States' concerns by, for example, providing an agreed protection/humanitarian response reducing the motivations for irregular onward movement, mobilizing resources and humanitarian assistance, and building global and/or regional solidarity.
 - TPSAs are solutions-oriented and time-limited.
 - TPSAs permit admission to the territory for the concerned populations, including through disembarkation for boat arrivals.
 - TPSAs provide for formalized identification, registration and documentation. They also include mechanisms for the identification of persons with specific vulnerabilities or protection needs calling for a more particularized response.
 - Drawing on international refugee as well as human rights law, TPSAs include a minimum set of standards of stay, while preserving any more favourable standards that may apply.⁵

⁴ Supra note 3.

⁵ See, Recommendation E of the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, which "[e]xpresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms

- TPSAs are without prejudice to the obligations of States under international law, including particularly the 1951 Refugee Convention and/or its 1967 Protocol, as well as other human rights and/or regional refugee instruments to which they are party.⁶
- TPSAs are not intended to substitute for other protection mechanisms that respond adequately to the situation at hand,⁷ or to replace existing regional temporary protection schemes that would be applicable and/or more suitable to the situation at hand.⁸

4. SCOPE

9. TPSAs are particularly suited as a response to:
 - (i) large-scale influxes of asylum-seekers or other similar humanitarian crises;
 - (ii) complex or mixed cross-border population movements, including boat arrivals and rescue at sea scenarios;
 - (iii) fluid or transitional contexts [e.g. at the beginning of a crisis where the exact cause and character of the movement may be uncertain, or at the end of a crisis, when the motivation for departure may need further assessment]; and
 - (iv) other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity.
10. In each of these scenarios, individual status determination is either not applicable or feasible, or both.⁹
11. In designing TPSAs, it will be important to agree on the target situations or trigger events to ensure predictability and to clarify the beneficiary category/ies.¹⁰ In contrast to the 1951 Refugee Convention definition of a refugee,¹¹ the activation and scope of TPSAs would be based on categories, groups or scenarios, allowing for a flexible and immediate response to the crisis in question.

of the Convention, the treatment for which it provides.” UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, A/CONF.2/108/Rev.1, 25 July 1951, available at: <http://www.unhcr.org/refworld/docid/40a8a7394.html>.

⁶ Super note 3.

⁷ For example, *prima facie* recognition of refugee status in mass influx situations is generally the preferred and most appropriate approach in States parties to the 1951 Refugee Convention and/or regional refugee instruments (supra note 3) where the large majority of individuals, or the large majority of a group of similarly situated individuals, in flight from that country meet the applicable refugee definition.

⁸ Note, for example, the EU Temporary Protection Directive, supra note 3.

⁹ Individual status determination is not always *feasible* (for example, in mass influx situations it can overburden determination systems) or *applicable* (for example, owing to the character of the movements, in the context of non-States parties to the 1951 Refugee Convention or other refugee instruments, or where persons would generally not be considered to fall within the Convention, such as persons fleeing natural disasters). On the latter, see UNHCR, *Expert Meeting on Climate Change and Displacement*, 22-25 February 2011, Bellagio, Italy, Summary of Deliberations on Climate Change and Displacement, available at: <http://www.unhcr.org/4da2b5e19.html>. See, in particular, UNHCR Executive Committee (ExCom), *Protection of Asylum-Seekers in Situations of Large-Scale Influx*, No. 22 (XXXII), 21 October 1981, available at: <http://www.refworld.org/docid/3ae68c6e10.html>; See, also, UNHCR, *Protection of Refugees in Mass Influx Situations: Overall Protection Framework*, Global Consultations on International Protection/Third Track, 1st Meeting, EC/GC/01/4, 19 February 2001 para. 13; UNHCR, *Note on International Protection*, UN Doc. A/AC.96/830 (1994), para. 47, available at: <http://www.unhcr.org/refworld/docid/3f0a935f2.html>.

¹⁰ Migrants caught up in humanitarian crises could, for example, benefit from temporary protection or stay arrangements pending other solutions, including notably return to their countries of origin.

¹¹ Art. 1A(2), 1951 Refugee Convention.

5. ENTRY AND RECEPTION¹²

12. TPSAs require permitted entry to the territory for affected populations and persons, and proper systems for the identification, registration and documentation of beneficiaries, using criteria which are coordinated and to the extent possible harmonized across the region.
13. Appropriate reception arrangements include:
 - providing access to territory and protection from direct or indirect *refoulement*;
 - addressing the immediate needs of new arrivals, e.g., medical treatment, shelter, food, family tracing;
 - referral mechanisms allowing rapid identification and differentiation between different categories of persons, as appropriate, as well as identity and security screening, including the separation of combatants/fighters and other armed elements from the civilian population;¹³
 - registration and documentation;
 - counseling, provision of information and advice to new arrivals;
 - mechanisms for the identification of persons with specific vulnerabilities or protection needs calling for a more particularized response;
 - collecting information in a way that facilitates data and information exchange for the purposes of planning, etc., in line with international data protection principles.
14. While TPSAs are generally oriented to those entering the territory, consideration would need to be given to those sharing the same country of origin or nationality who are already in the territory (*sur place*), not able to return and have no other legal means of stay.
15. With regard to maritime/rescue at sea situations, a particular range of considerations arise, including safeguarding lives at sea, respecting the obligations of maritime law, maintaining the integrity of the search and rescue regime, disembarkation, and ensuring the smooth flow of maritime traffic. Applying the “Model Framework for Cooperation following Rescue at Sea Operations involving Refugees and Asylum-Seekers” is recommended as a template for agreed action.¹⁴

6. MINIMUM STANDARDS OF TREATMENT

16. Building on Executive Committee Conclusion No. 22 of 1981¹⁵ and bringing that Conclusion in line with subsequent developments in international human rights law, TPSAs envisage the following minimum standards of treatment:
 - recognized and documented permission to stay for the designated period;
 - protection against arbitrary or prolonged detention;¹⁶
 - non-discriminatory, humane and dignified treatment, including guarantees of shelter/housing, access to health and other basic services and education;

¹² Entry and reception refers to the responses envisaged for the initial period after arrival.

¹³ UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>. See specifically on profiling and referral Chapter 5 (“Mechanisms for profiling and referral”). See, also, UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, available at: <http://www.refworld.org/docid/452b9bca2.html>.

¹⁴ UNHCR, “A Model Framework for Cooperation following Rescue at Sea Operations involving Refugees and Asylum-Seekers”, Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea - how best to respond?, Summary Conclusions, Djibouti, 8-10 November 2011, available at: <http://www.unhcr.org/4ef338fa9.pdf>.

¹⁵ UNHCR, ExCom, *Protection of Asylum-Seekers in Situations of Large-Scale Influx*, No. 22 (XXXII), 21 October 1981, available at: <http://www.refworld.org/docid/3ae68c6e10.html>

¹⁶ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>.

- freedom of movement, except as may be warranted by national security, public order or public health considerations;
- the registration of births, deaths and marriages;¹⁷
- physical security, including protection against sexual and gender-based violence and exploitation;¹⁸
- special care for separated and unaccompanied children, guided by the best interests of the child;¹⁹
- respect for family unity and tracing, and opportunities for reunification with separated family members;
- particular attention and special arrangements for persons with special needs, including persons with disabilities;²⁰
- self-sufficiency or work opportunities; and
- access to UNHCR and, as appropriate, other relevant international organizations and non-governmental organizations and civil society.²¹

17. In cases of extended stay, or where transition to solutions is delayed, the standards of treatment would need to be gradually improved.

18. Persons receiving protection under a TPSA have duties to the country in which they find themselves. Most importantly, they are required to comply with the laws and regulations of the host country, as well as measures taken for the maintenance of public order in accordance with international human rights law.

7. TRANSITION TO ALTERNATIVE STATUSES, SOLUTIONS AND TERMINATION

19. Timely (and early) identification of solutions, on a multilateral basis and based on international cooperation and burden- and responsibility-sharing principles (see 8 below), is a key component of any TPSA.

20. Although the determination of an exact duration for a TPSA may not always be possible because of the complex or fluid nature of the movements and their root causes, States may agree to set timeframes, to be extended as conditions persist.

21. Temporary protection/stay ends when:

- (i) it is determined – on the basis of an objective assessment based on clear indications – that the situation causing the displacement has ended, and voluntary return is reasonable and can be carried out in safety and dignity;
- (ii) the TPSA has been replaced by another form of protection, including transition to refugee status, as appropriate;
- (iii) an individual has transitioned to an alternative status (including, for example, residency status, work visa, or another migration status); or

¹⁷ See, UNHCR, ExCom, *Conclusion on civil registration*, No. 111 (LXIV), 2013, available at: <http://www.unhcr.org/525fd9ef9.html>.

¹⁸ See, UNHCR, ExCom, *Conclusion on women and girls at risk*, No. 105 (LVII), 2006, available at: <http://www.unhcr.org/45339d922.html>.

¹⁹ See, UNHCR, ExCom, *Conclusion on children at risk*, No. 107 (LVIII), 2007, available at: <http://www.unhcr.org/4717625c2.html>. See also, United Nations Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>.

²⁰ See, UNHCR, ExCom, *Conclusion on refugees with disabilities and other persons with disabilities assisted and protected by UNHCR*, No. 110 (LXI), 2010, available at: <http://www.unhcr.org/4cbeb1a99.html>.

²¹ Persons who have fled persecution or serious human rights violations at the hands of their own governments, or who have not been able to obtain State protection against such harms, may not wish or be able to avail themselves of their national State's consular assistance.

- (iv) an individual has been admitted to a third State on a humanitarian basis or through resettlement.

22. The decision to end the applicability of a TPSA overall would need to be taken, preferably collectively, by all relevant States, to prevent onward movements caused by the premature ending of stay in one country (see consultation and coordination at 9 below).

8. INTERNATIONAL COOPERATION, BURDEN- AND RESPONSIBILITY-SHARING

23. International cooperation – in the form of financial, technical and/or in-kind assistance and/or the humanitarian admission or resettlement of persons – will usually be essential to any TPSA, and could consist of the following elements/components:

- Establishing preexisting “pools” of funds or resources so that responses are timely and effective, while not limiting flexibility and adaptability to the specific circumstances. A permanent TPSA fund at the international and/or regional level would, for example, be a good practice;
- Setting up of standby schemes for technical support to allow for an immediate response to urgent needs in receiving countries, including, for example, through the deployment of protection experts, or mobile protection teams (for example, for the urgent assessment of persons disembarked after rescue);
- Where local solutions are appropriate and feasible, providing financial assistance and other forms of support, including development assistance, for the benefit of the displaced and the communities hosting them;
- On resettlement or humanitarian admission, allocating above-quota emergency places, as well as developing checklists or standard operating procedures to guide such programmes. Further using resettlement or humanitarian admission more strategically as a tool of burden- and responsibility-sharing, including through the application of group referral methodologies. Emergency relocation or evacuation platforms could also be useful tools;
- Permitting beneficiaries to access in-country or external labour mobility schemes, or other migration opportunities, as an important demonstration of solidarity and burden-sharing.²²

9. CONSULTATION AND COORDINATION

24. For regionally-agreed TPSAs, setting up a consultation mechanism (such as a steering committee) would be an important component. Such a mechanism would involve affected States, other interested States, UNHCR, and, as appropriate, other relevant international organizations. The role of such a consultation mechanism would be to agree the categories, situations, or groups to whom the TPSA would apply, its basic parameters, modalities of implementation and, importantly, solutions and termination.

25. UNHCR is prepared to play a convening and advisory role for such consultations, consistent with the Statute of the Office, as already practiced in previous temporary protection/stay situations, while coordinating with other stakeholders.

26. TPSAs may also be pursued through existing regional processes. Regional Cooperation Frameworks could be a predictable way in which States and other stakeholders would come

²² See, for example, UNHCR and International Labour Organization, *Labour Mobility for Refugees : Workshop in Geneva, 11 - 12 September 2012 - Summary Conclusions*, 25 October 2012, available at: <http://www.refworld.org/docid/508e4fa72.html>.

together to develop practical arrangements – including TPSAs – that would respond to, and manage, specific situations.²³

10. MODALITIES OF IMPLEMENTATION

27. Modalities of implementation would need to be agreed at the multilateral/regional level, while taking into account national specificities, and cover all stages of the TPSA, including its termination. Appropriate consultation and coordination is required (see 9 above).
28. Subject to international data protection principles, the collection, analysis and exchange of data and information about the characteristics of a movement and its composition are essential for a proper diagnosis and response. Such data would typically include information relating to conditions in countries of origin, causes and motivations for movement, modes of transport, transit routes and entry points.
29. At the national level, States may need to adopt or amend laws, policies or practices to implement TPSAs,²⁴ and to establish or strengthen appropriate institutions and build their capacity. While States remain primarily responsible for TPSAs, UNHCR and, as appropriate, other relevant international organizations could assist with certain practical, technical or operational aspects.

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²³ See, for example, Bali Process, *Regional Cooperative Framework*, 2011, available at: <http://www.baliprocess.net/regional-cooperation-framework>.

²⁴ In particular, States may need to introduce new visa categories, or make clear that existing visas are applicable to the situation at hand.

Annex

**What temporary protection/*stay is*,
what temporary protection/*stay is not*,
and what it *should not be***

Temporary protection/*stay is*

- an appropriate multilateral protection response to humanitarian crises, including large-scale influxes, and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate
- complementary to and building on the international refugee protection regime, being used at times to fill gaps in that regime, especially in non-Convention States
- a form of protection that provides immediate protection from *refoulement* and basic minimum treatment
- solutions-oriented, with standards of treatment to be improved if stay is prolonged

Temporary protection/*stay is not...*

- a protection scheme replacing existing international obligations, in particular the 1951 Refugee Convention and/or its 1967 Protocol, or regional refugee instruments, such as when *prima facie* or more favourable protection is available and/or suitable
- a substitute for the proper management of mixed migration flows
- suitable if stay becomes prolonged

Temporary protection *should not be used...*

- to undermine existing international obligations
- to discourage people from seeking asylum under the 1951 Refugee Convention and/or regional refugee instruments, where available
- to encourage premature return