



HELP ON THE ROUTE

QUICK REFERENCE MANUAL

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PROJECT IMPLEMENTED BY:





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**“HELP ON THE ROUTE”
QUICK REFERENCE MANUAL**

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INTRODUCTION

This Manual was created as part of the project **HELP ON THE ROUTE - Fostering protection of human rights of migrants passing through Macedonia and Serbia** and implemented by Ana and Vlade Divac Foundation in partnership with Arbeiter Samariter Bund Deutschland e.V., Novi Sad Humanitarian Centre, Helsinki Committee of the Republic of Macedonia.

The purpose of this Manual is to present the legal and institutional framework for the provision of services for migrants by civil society organisations (CSOs) and guide CSOs in framework of quick response mechanism, pointing out issues and problems that should be addressed. Manual formulates recommendations and examples of good practice that will be used as and guidance to the implementing partner organisations as well as arguments to stakeholders in Serbia and Macedonia.





HELP ON THE ROUTE

GENERAL PART

Massimo Moratti

BRIEF INTRODUCTION TO HUMAN RIGHTS LAW

HUMAN RIGHTS AND HUMAN RIGHTS LAW

After the end of World War II, the 1948 Universal Declaration of Human Rights (UDHR) and the treaties that followed afterwards, human rights have progressively become a dominating topic both in the context of international relations and in the context of governance between states and their citizens. But what are human rights?

We can refer to the definition of human rights as given by the Office of the High Commissioner for Human Rights (OHCHR):¹

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

This helps us define the topic. In this manual, we will focus in particular on International Human Rights Law, which is the international legal framework to which the governments in the region have to conform to.

In this case, we can say that:

International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.²

Basically, we are speaking about international treaties and customary norms which oblige Government to behave in a certain manner. At the same time, these treaties create rights for individuals which, under certain circumstances, can be invoked before international bodies.

More concretely, the main human rights contained in international treaties are applicable in Serbia and in Macedonia. Those rights have been on one side incorporated into the respective Constitutions and on the other side, both Serbia and Macedonia have ratified the most important Human Rights treaties.

We could refer to 7 treaties only which are of particular relevance for our work:

- » The International Covenant on Civil and Political Rights (ICCPR)³
- » The International Covenant on Social, Economic and Cultural Rights (ICESCR)⁴
- » The Convention Related to the status of refugee (Refugee Convention)⁵
- » The Convention Against Torture (CAT and OPCAT)⁶
- » The Convention on Elimination of All Forms of Discrimination Against Women⁷
- » The Convention on the Rights of the Child (CRC)⁸
- » The European Convention on Human Rights (ECHR)⁹

1 <http://www.ohchr.org/EN/AboutUs/Pages/FrequentlyAskedQuestions.aspx>

2 <http://www.ohchr.org/EN/AboutUs/Pages/FrequentlyAskedQuestions.aspx>

3 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

4 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

5 <http://www.unhcr.org/3b66c2aa10>

6 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

7 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

8 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

9 http://www.echr.coe.int/Documents/Convention_ENG.pdf

The first two treaties, together with the UDHR form the so-called Bill of Human Rights.

The 1951 Refugee Convention defines the status of refugees and what are the state obligations in terms of rights of refugees.

The Convention Against Torture is relevant because of its direct impact in terms national prevention mechanisms and the relevance for the work with the refugees.

Finally, the ECHR, created within the Council of Europe, is important because of the importance of its provisions and of the binding character of the decisions of the European Court of Human Rights.

Human Rights treaties do not only foresee a list of rights, but they often create implementation mechanisms, i.e. specialized, independent bodies which have the task of overseeing the implementation of the rights foreseen in each of the treaties. Under certain mechanisms, individuals are granted the right, after having fulfilled certain conditions, to address those international mechanisms to determine whether there has been a violation of their rights. In these cases, the bodies established by the UN treaties issue "views" or "recommendations", which do not oblige states to comply with them. However, the body established by the European Convention on Human Rights, i.e. the European Court of Human Rights is particularly important because its judgements have a binding nature and states are obliged to comply with them and to provide redress for the individuals. Not only the decisions in the specific cases as such are binding, but in fact it is the very same case law of the Strasbourg court which becomes relevant and applicable in the countries that have ratified the ECHR.

In other treaties, like the Convention Against Torture and its Optional Protocol, states oblige themselves to create specific national mechanisms to ensure the respect of the treaty and the compliance with the international prohibition of torture and any other form of inhuman, cruel, degrading treatment or punishment. This is particularly relevant for the current work on refugees.

SOME COMMON FEATURES OF HUMAN RIGHTS LAW

Traditionally, Human Rights are divided into two groups: Civil and Political Rights and Economic, Social and Cultural Rights.

This division is due in part to historical reasons, related to the fact that the Covenants were signed at the time of the Cold War: after the UDHR, the drafting process was somehow influenced by overall world situation and for this reason, two separate treaties were put in place.

The division is also in part due to the fact that the measures that states need to put in place to guarantee those rights are in general different. For civil and political rights, it is often stated that the states need to put in place immediate measures and often those measures are of a legislative nature. On the other side, in order to implement the provisions of the Covenant on Economic Social and Cultural Rights the states need to commit to longer term programs, including budgetary and material resources allocation.

This is only partially true, since in reality, the type of measures required from states to implement Human Rights treaties are often of a mixed character, some of them are immediate, while some other are of a longer term. Nevertheless the distinction between the two main treaties has been maintained.

Human Rights provisions are in general applicable to **all persons** present on the territory of each state. Certain rights however are granted only to persons who are legally present on the territory or who are citizens of a specific state, for example the freedom of movement or the right to vote apply only to certain categories.

It is important to state that the simple presence on the territory of a state entitles persons to the enjoyment of such rights. Even transit areas in airports are therefore considered as part of the territory. "No-man's land" in international law does not exist.

NON-DEROGABLE RIGHTS AND RIGHTS SUBJECT TO LIMITATIONS

Art. 4 of the ICCPR and article 15 of the ECHR foresee exceptional conditions, like state of emergencies, or war, threatening the life of a nation which can lead some countries to suspend the application of the Human Rights obligations deriving from each treaty.

However, not all the rights can be derogated. Certain rights can't be derogated at all. Under the ICCPR these are:



- » the right to life,
- » the prohibition of torture,
- » the prohibition of slavery,
- » the prohibition of imprisonment for not fulfilling a contractual obligation,
- » the right to a legal personality,
- » the non-retroactivity of criminal law,
- » the freedom of conscience, religion and thought.

Under the ECHR, in the main text, their number is slightly smaller number, although a number of more non-derogable rights is contained in the additional protocols to the ECHR:

- » the right to life,
- » the prohibition of torture,
- » the prohibition of slavery,
- » the non-retroactivity of criminal law,

It is a common interpretation that also the right to a fair trial, at least for what concerns non-derogable rights is to be considered as non-derogable.

The importance of this provision is that it helps define a category of rights which are called “non-derogable”, for which no derogation is allowed even in the case of war. Somehow the violations of non derogable rights are considered amongst the most serious and in terms of monitoring there is a case to give priority to monitoring those rights.

Another category of rights are those rights that can be subject to limitations. The enjoyment of rights is not absolute and for a number of rights, states are allowed to limit them. In fact these are rights like the freedom of movement, the freedom of expression, the freedom of association that are usually regulated and limited by the state.

Such limitations need to respect certain criteria:

- » They need to be foreseen by the law;
- » They are dictated by the necessity of preserving a legitimate common aim like national security, public health, public order, rights and freedoms of others;
- » They need to be “necessary”, which means that there is a requirement of proportionality between the measure sought and the goal to be attained. This means that if there are alternative methods to achieve those public aims without infringing upon the rights of individuals, such alternative methods should be sought.

Limitations apply to a number of rights, like for example freedom of association, right to peaceful assembly, right to manifest his/her own beliefs. From our point view, limitations to freedom of movement are of a special interest, since there might be issues of relevance from the point of view of Human Rights monitoring.

RIGHTS BASED APPROACH AND OBLIGATIONS OF STATES

When it comes to development work and international assistance, we often hear about the so-called rights based approach¹⁰ to development. By rights based approach we usually refer to a conceptual framework which is based on human rights standards and it strategically aims at promoting and protecting them. This is in contraposition to the more traditional model of charity, where beneficiaries of international assistance are simply recipients of international assistance.

Human rights based approach anchors international assistance to a clear set of rights and norms. It also identifies the persons who need assistance as right holders and on the other side the authorities in charge as *duty bearers*. It is a sustainable framework since it is based on existing legal obligations and it doesn't depend on specific time-limited inputs.

A rights-based approach clearly sets as goal the fulfilment of human rights and it can also rely on the existing case law of human rights as a standard to assess the work of the local authorities as duty bearers.

¹⁰ <http://hrbportal.org/faq>

TYPE OF OBLIGATIONS OF STATES *VIS-À-VIS* HUMAN RIGHTS

The human rights based approach helps us define right holders and duty bearers, i.e. the States. As duty bearers, the obligations of the states *vis-à-vis* human rights are usually divided into three types:

- » Obligations to respect
- » Obligations to protect
- » Obligations to fulfil.

The obligation to respect is the more immediate type of obligation that we can derive from the fact that a State has agreed to be bound by a human rights treaty. A State shall respect human rights, concretely the state shall refrain from any action which would lead to the violation of the rights of the people, i.e. a state shall not arbitrarily deprive its citizens of their life, a state shall not commit torture.

The obligation to protect is the obligation of states to protect the enjoyment of the rights by their own citizens, i.e. to enable a legal and judicial framework where the State is obliged to protect its citizens against human rights abuses. To give a concrete example, the police force of a state has a clear obligation to protect the right to life of persons, by intervening whenever lives are in danger.

The obligation to fulfil requires states to take positive actions and in numerous cases to commit resources to ensure the enjoyment of the rights by its citizens. For example, in order to grant the right to education for its citizens, the state is obliged to construct a sufficient number of schools accessible to the citizens.

Not all the rights present the same type of obligations for the states. In particular, obligations to fulfil are more typical of the economic, social and cultural rights. Nevertheless, this framework helps us better define what it is expected from states in our specific context: a police officer who stands by and does not intervene when a person is attacked by thieves for example represent a clear failure by the state to protect Human Rights. Similarly, if a state declines for years to build a hospital for alleged lack of resources and instead it builds an amusement park, this fact can also be used to argue that the state failed to discharge its obligations.

MINIMUM CORE OBLIGATIONS AND PROGRESSIVE REALISATION

When it comes to social, economic and cultural rights it is important to bear in mind the concept of minimum core obligations. It has often been argued that economic, social and cultural rights are of a progressive realisation and they cannot be achieved as quickly as the civil and political rights, which very often depend only on the adoption of legislation and relevant by laws. For economic, social and cultural rights, it has been recognized that states can work towards their progressive realization with the "*maximum available resources*". Nevertheless, States cannot postpone indefinitely the realization of a number of rights. For this purpose, the UN Committee on Economic Social and Cultural Rights¹¹ has identified a number of **minimum core obligations** and they require that governments grant to individuals living under their jurisdiction essential levels of protection of each of their ESC rights. This translates into protection from starvation, primary education, emergency healthcare and basic housing. These are the minimum requirements that governments have respect towards everyone.

¹¹ Committee on Economic, Social and Cultural Rights, General comment 3.

OBLIGATIONS ARISING FROM THE VIOLATION OF HUMAN RIGHTS

When a state is found to violate rights of persons under its jurisdiction, there are automatically three obligations that arise as a result of this violation.

- » In first place the state shall immediately put an end to such violation, in the case this is still ongoing.
- » In second place the state is obliged to provide reparation for the violation that has occurred so to eliminate its consequences.
- » In third place the state is obliged to take measures, the so called guarantees of non-repetition, to avoid that the same violation will occur in the future.

This approach is valid for all types of violations and it can be used as a conceptual framework to monitor how the state discharges its obligations once violations of rights have occurred.



HUMAN RIGHTS ISSUES ARISING IN THE CONTEXT OF THE MIXED MIGRATION

The following paragraphs will focus on some of the most common issues that have surfaced in the field, in the context of migration. The criteria why these rights have been selected is simply because they have raised the most problematic issues in terms of protection.

DEPRIVATION OF LIBERTY AND RESTRICTIONS OF FREEDOM OF MOVEMENT

It is necessary to analyse both the provisions of freedom of movement as well as those relevant to deprivation of liberty. We will use as reference the ECHR, where freedom of movement is foreseen in one of the Optional Protocols.

Article 2 of the 4th Optional Protocol to the ECHR states:

- » Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- » Everyone shall be free to leave any country, including his own.
- » No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- » The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

While article 5 of the main text of the ECHR states:

- 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:**
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.**
2. ...
3. ...
- 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.**
5. ...

There is continuity between limitations to freedom of movement and deprivation of liberty. In international HR law the focus is not on the definition taken under domestic law, but rather on an overall series of conditions which apply to the restrictions on freedom of movement.

Moreover, a cumulative series of restrictive conditions, limiting freedom of movement, which individually would not amount to detention, if taken altogether and applied to one individual could in fact lead to a situation of detention.

As it can be seen, detention can be justified to prevent a person from entering a country illegally or for the purpose of deporting or extraditing a person. This however shall apply only for short periods, the ones necessary to check the identity and to process an asylum application: in this case it would not represent a violation of the ECHR. On the contrary, if detention is excessively prolonged, we could be facing a situation which would amount to a violation of the ECHR. Similarly, as article 31 of the Refugee Convention states, detention for asylum seekers and refugees shall not be applied.

Vis-à-vis the situation in the camps in Serbia and Macedonia, there are several points that can be discussed.

The situation is also not the same everywhere because regulations for transit and reception centers are not standardized. In some areas people can leave freely during the day, in other areas for example, freedom to leave is subject to many more restrictions. Some centers are in the middle of the city and some others are in remote areas where there is no public transport except for taxis. There is also not a standardized way of checking who is in the centres and who is not.

Without further entering into these issues, we need to recall that limitations to freedom of movement are possible and in line with the ECHR and human rights law. These limitations however need to meet the criteria that we have previously mentioned in terms of limiting the enjoyment of rights:

- » They need to serve a legitimate public aim, like maintaining public order, security, public health, freedom and rights of other in a democratic society. The emphasis on democratic society is not casual, i.e. all these measures are justified in the context of a democratic society.
- » They need to be "necessary", i.e. there needs to be proportionality between the limitation of freedom imposed on certain persons and the goal to be obtained.
- » They need to be prescribed by law and "law" is understood not as a local camp regulation, but something that has specific requirements like being accessible and foreseeable and this is probably the most difficult, in most cases there isn't a law or by law that regulates the conditions in the transit-reception centres.

It is important to recall that all these three conditions need to be fulfilled to bring the limitation of the right in compliance with the ECHR. In theory it is possible therefore to challenge the situations in the camps before a competent domestic body.

In any case, detention for the purpose of deterring asylum seekers, for punitive reasons or for dissuading asylum seekers from the pursuit of their claims are contrary to international law.

THE PROHIBITION OF TORTURE, INHUMAN, CRUEL OR DEGRADING TREATMENT OR PUNISHMENT

As we have previously mentioned, this is one of the most serious violations of Human Rights law. The prohibition of torture is universally recognised as forbidden under international law in any circumstance. It is a non-derogable right which even in time of war is not possible to suspend.

We often refer to prohibition of torture, but as we can see the prohibition cover also inhuman and degrading treatment or punishment. The UN Conventions also add the word "cruel" to such treatment. The difference with torture is merely from the quantitative point of view. The UN stated that:

Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.¹²

¹² Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 3452 (XXX) of 9 December 1975.

And torture has been also referred to as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.¹³

Three elements are necessary therefore: intensity of pain, intention and purpose. It is understood that the intensity of pain needs to be assessed on a subjective basis, i.e. taking into account who has been receiving such treatment. For this reason, it is rather difficult to draw a line and state clearly what is torture and what is inhuman treatment, it all needs to be assessed on a case by case basis. Even measures that individually would not amount to torture, if combined together can be considered as torture.

Ill-treatment that has not the same intensity as torture or does not have the intention can still amount to inhuman and degrading treatment or punishment. This means that it does not need to be premeditated, but simply ill-treatment can occur for lack of care or negligence.

Degrading is that treatment which aims at creating in the victim feelings of anguish, fear or inferiority so to humiliate them.

The issue of torture or ill-treatment becomes particularly important in detention conditions, where persons are separated and secluded from the rest of the society. It is worth recalling that in the legal space of the European Convention, even persons whose liberty is restricted like those in psychiatric hospitals might be subject to ill-treatment and this would fall within the monitoring scope of the international bodies. In recent times, this applies also to detention facilities at airports or at border posts.

The Convention Against Torture foresees the creation of a National Preventive Mechanism¹⁴ at the state level. The NPM can monitor the conditions of detention, in order to prevent torture and ill-treatment, in all areas where persons are deprived of their freedom. In our context, this also applies to asylum centres, reception and transit camps, which have been regularly visited by the National Preventive Mechanisms. For Serbia this function is covered by the Office of the Ombudsman (Protector of Citizens)¹⁵ and the same applies to Macedonia.¹⁶

It is also important to recall that deportation can amount to a violation of the prohibition of torture and illegal treatment. In particular, if the person by being deported, s/he is exposed to torture or other ill-treatment, international laws foresees that both the deporting and the receiving state are liable for violation of the prohibition of torture.

Positive obligations arise in case of torture: authorities are in fact obliged to investigate all allegations of torture by its law enforcement bodies. This requires significant cooperation also from medical officials who might have documented cases of torture and how those reports are drafted. There are specific guidelines for medical doctors when documenting torture.

Finally, it is worth recalling that the use of force is permitted only for law enforcement officials. Law enforcement officials are legally authorized to use force, selected and trained for this purpose. The same applies to the use of arms. When using force, law enforcement officials need to exert restraint and proportionality. They also need to provide assistance to any person injured in those situations. The same applies in places of detention. This clearly implies that any use of force by a person who is not a law enforcement official is forbidden.

HUMAN RIGHTS AND EXPULSIONS

A state has the right to expel foreign nationals from its territory. This is the general rule.

By expulsion it is generally understood any measure taken by a state to compel a foreign national to leave the territory where he/she was lawfully resident. Expulsion means withdrawal of the visa of a lawful resident, rejection at border and any form of transfer, deportation, removal, exclusion or return. "Lawfully" in this context is a term subject to dispute, because it

¹³ UN Convention Against Torture, Art. 1.

¹⁴ Optional Protocol Convention Against Torture, Art. 3.

¹⁵ <http://www.ombudsman.org.rs>

¹⁶ <http://ombudsman.mk/EN/default.aspx>

refers to persons who might have stayed longer than their permits allow. However, in case of doubt, whether the presence of a person on a territory is lawful or not, guarantees against arbitrary expulsion do apply nevertheless.

Human Rights law has developed powerful rules which somehow limit the power of states to expel aliens. These rules have both a procedural nature and a substantive one. In particular there are two types of situations when this is not possible:

- » In the case *refoulement*. The principle of *non-refoulement* prohibits the transfer of a person to a territory where s/he faces a serious risk of violation of certain rights. It is a provision of international customary law and it originates from refugee law. We have previously seen the prohibition of deportation in case of risk of violations of the prohibition of torture. This applies also if the place to where the persons are expelled is not the final destination, but a third state. It arises from the obligation of the states to ensure the rights of all persons under its jurisdiction. The risk must be a foreseeable consequence, there is no need to prove the certainty of such risk. Reasons for prohibiting the *refoulement* to date has been cases where persons could have been exposed to torture, violation of the right to life, unfair trials, deprivation of liberty.
- » In case of violation of rights enjoyed in a state. This applies in cases where a person by being expelled would suffer a violation of the rights enjoyed in the expelling state, regardless of where the person is expelled. In particular this refers to the right to respect for family life but also to other rights like freedom of conscience and of religion.

Persons subject to an expulsion procedure need to have right to an effective remedy with a suspensive effect. This remedy needs to be accessible to the persons and it needs to be independent, even if it is not necessary that it is a judicial body at all times.

Also the ECHR prohibits the collective expulsion of individuals. Each case needs to be examined individually by a competent authority.



HUMAN RIGHTS MONITORING

This section provides practical advice and direction on how to monitor human rights. It is drafted based on practical field experience and it draws upon the relevant UN practice, as envisaged by the Office of the High Commissioner for Human Rights.¹⁷

PLANNING MONITORING

Planning it is important to direct the focus of our monitoring. As we have seen, some human rights violations are particularly serious. In particular, the prohibition of torture and inhuman, cruel, degrading treatment or punishment are episodes which have occurred in the context of the migration crisis. Incidents concerning these cases should be prioritized and investigated without delay.

When planning for regular reporting, it might be wise to give concrete directions to monitors, in order to observe special aspects of the conditions of migrants in Serbia and Macedonia. For example, reception centers in the region, are they open or semi-open? How are the living conditions? Registration procedures and ID cards for refugees and migrants are another topic. These can be the topics to focus our attention when monitoring in order to direct future actions, which can result in specific thematic reports. This can be inserted in the initial work plans of the network and then compiled in future reports with recommendations for policy change.

GENDER MAINSTREAMING INTO HUMAN RIGHTS MONITORING

Integrating a gender perspective allows to recognize and account for Human Rights violations against women and men of all ages. It helps understand the types and causes of violations.

In order to do so, we need to have a proactive attitude to detect these differences and it is about making those differences visible through monitoring.

It is important to analyse Human Rights violations through a gender perspective. This leads to two types of discrimination:

- » All forms of discrimination against women in the enjoyment of their rights are gender specific violations;
- » Other Human Rights violations are not directly discriminatory, but their impact is different on men or women, for example different security and health needs.

A gender analysis allows us to catch these differences, both gender specific aspects of HR violations as well as violations of the rights of women.

For this reason, data should also be gender-disaggregated and information should be gender sensitive to the specific situation.

This allows us to better identify corrective actions, since it is possible to understand not only what are the differences between men and women, but also why those differences exist.

Such difference can be the result of deeper causes like family ties, religion, and culture.

¹⁷ <http://www.ohchr.org/Documents/Publications/OHCHRTableContents.pdf>

GUIDING PRINCIPLES ON HUMAN RIGHTS MONITORING

A number of general principles are applicable to Human Rights monitoring. Many of these principles appear obvious and rather logical. However, the practice suggests that very often in the field they can be forgotten and monitors are undecided on which action to take.

The state is the main duty bearer for the protection of HR. Monitoring should help reinforce this role and play a preventive role of possible abuses. It should also collect information to identify problems and causes for future policy making.

The following list of principles is understood to assist human rights monitors in conducting their monitoring tasks.

Do no harm

This is a recurring principle of all human rights monitoring. Monitors cannot guarantee the safety and rights of persons of concern. It is important that the safety of the persons of concern comes first and should prevail when making decisions in terms of monitoring or not certain issues.

Know the standards

These are the tools of the work. Monitors should be familiar with the applicable standards which are based on human rights law and are applicable to the current situation.

Exercise good judgment

Do not apply rules blindly, common sense and sound judgment are always to be used.

Consult

When in doubt, when facing difficult situations, seek consultation with other officers, possibly superiors.

Respect the authorities

The role of monitoring is to support the authorities performing their tasks in accordance with human rights standards. For this reason, respect for the authorities is required to encourage them to improve their behaviour.

Credibility

Do not make promises that you cannot maintain, always explain what you can do and what you cannot do.

Confidentiality

This is one key principle. Respecting confidentiality of information is essential. Breaches of this principle can lead to harm for the person that we are trying to protect. It can also jeopardise the monitors' work and safety, undermine the confidence in our work and thus undermine the effectiveness of our work.

Security

This is also another key principle. Security should be kept in mind first for our work in the field, second for the persons that we are trying to protect and who provide information to us.

Consistency, persistence, patience

Collecting the right information can be a long process. Numerous sources might have to be corroborated and verified. In particular when trying to address issues, it is important to remain persistent and continue our efforts, without giving up if no change is produced immediately.

Accuracy and precision

It is key to provide sound and precise information. Reports need to be well documented. Communication needs to be in writing to avoid misunderstanding. Refrain from the temptation of using sensationalistic tones.



Impartiality and objectivity

It is important to remember that monitors need to be impartial vis-à-vis the sides, while upholding the applicability of the human rights standards. All facts should be considered in an objective manner.

Sensitivity

Be aware that the persons we are interviewing might have experienced trauma and that we run the risk of re-traumatising them by interviewing them. Be sensitive to different context and cultural backgrounds of the persons we are interviewing.

Respect

Treat all the persons with decency and respect. Be professional in your approach.

Visibility

A visible presence of monitors can deter future violations. Monitor's presence can also reassure people of concern. The standard approach in the monitors work is to see and being seen during the work.



HUMAN RIGHTS REPORTING

Human Rights reporting is an essential tool of Human Rights monitoring and it needs to answer to a certain number of criteria.

The functions of reporting can be summarized as follows:¹⁸

- » To record and analyse information
- » To present findings of monitoring and fact-finding activities
- » To express concern about a problem
- » To engage in dialogue with the authorities and advocate for change
- » Propose recommendations for corrective action.

In the following paragraphs, we will examine the main types of reports and their purposes.

INTERNAL, PUBLIC, REPORTS TO THE GOVERNMENT

When it comes to the circulation of reports, usually, in the UN practice, three categories are identified:¹⁹

- » Internal reports are used to communicate information internally within the organization or a network of organisations.
- » Public Reports are those circulated for the public at large, i.e. even outside the existing network and they can serve the purpose of advocating for certain issues, denouncing violations or raising support for institutional changes.
- » Reports to the Government are generally of a confidential nature and they are addressed to the government or to specific institutions, which are not internal to the network nor for public dissemination.

PURPOSE OF REPORTS

The purpose of reports is also another criterion to identify reports. On the basis of their purpose, reports can be divided into the following categories:

- » Interview reports to record interviews with victims, perpetrators, witnesses or other sources of information
- » Incident reports to detail some incidents of particular concern
- » Flash or emergency reports when urgent situations occur and there is the need for an immediate reaction
- » Periodic reports are necessary to cover all developments over a specific period
- » Thematic reports focus on a limited number of issues, which are explored and analysed in depth.

PERIODIC REPORTS WITHIN THE NETWORK

It is foreseen that within the network, a system of periodic reports will be created, for the purpose of generating the monthly reports for each country. The main goals of these reports can be identified as follows:

- » To document the work done *vis-à-vis* the goals of the project.
- » To alert about critical cases or situations, as well as trends.
- » To plan future efforts.

¹⁸ <http://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>

¹⁹ <http://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>

Another important goal of the reports is to inform the members of the network about ongoing issues and changes in the situation. Reports should cover both positive and negative trends and inform about ongoing activities.

For instance, the content could cover the following topics:

- » The period covered in the report – if possible a serial number of the report
- » An overview of the major developments
- » Ongoing trends
- » An overview of the activities implemented
- » Plans for the future period
- » Requests and recommendations

METHODOLOGY

Reporting follows a series of principles, which are common to all human rights reports.

- » **Purpose and target:** reporting is not just an obligation to comply with, but when drafting reports, it should be clear what are the objectives of the report and what is the desired impact.
- » **Accuracy:** reports need to be accurate and precise, information should be verified and corroborated. As much as possible, reports should be self-standing, i.e. they don't need to refer to previous reports or other documents. This applies in particular for acronyms.
- » **Language** should be simple and neutral, trying to convey facts, not feelings. Unnecessary adjectives, jargon or subjective elements of the writer should be avoided. Reports should be clear, concise, well organized. Emotive language should be avoided as it would convey the bias of the speaker.
- » **Consistency:** that's why templates are used, in this way information is presented in the same way across time and space and data can be compared. Locations, acronyms, terminology should also be standardized to avoid creating confusion. A standardized Human Rights database is a way of keeping consistency.
- » **Promptness:** reports need to be drafted promptly after the event we are reporting. This allows both the duty bearers to react promptly and the report being more accurate in the sense that impressions are still fresh if the report is submitted immediately.
- » **Quality control and clearance:** there is a need to ensure quality control and clearance procedures when reports are submitted by the initial drafter. Supervisors should review the initial drafts to make sure of the correctness of information and that sensitive information is adequately treated.

STANDARDS OF REPORTING

- » **Facts and analysis:** facts should be verified and separated from analysis. Information about the context should be provided. It is important to answer the following question:

Who did what to whom? When? Where? How? Why

- » Analysis should be **presented separately** from facts. The analysis should include to the maximum possible extent a legal analysis of the provisions breached as well as an analysis of the responsibility of the perpetrators. Trends should also be highlighted if appropriate.
- » **Confidentiality and informed consent:** consent is necessary for all types of interviews. It should be gathered specifically and the informant should be fully aware of the risks or retaliation s/he might face. It should be explained how information will be used. If such consent is not given, the information cannot be used, unless it is in an aggregated manner without any facts that might identify the persons in question. Still even if consent is given, the risk to harm to one informant should be assessed and then decide whether to include such information or not.

- » **Conceal identities:** during reporting, identities of perpetrators or source of information (even colleagues!) must be kept confidential at all times. Information about identity should be included in the case file and stored confidentially.
- » **Corroborate information:** never use rumours or uncorroborated information. Check more than one source. If this is not possible, then just specify that the info is not corroborated. "Reportedly" or "allegedly" are the common expressions to use when providing uncorroborated information.
- » **Action oriented:** reports should contain recommendations for action, having in mind the most immediate impact on rights holders.
- » **Gender perspective** should be included: a gender analysis to measure the impact on men and women, girls and boys. Data should be disaggregated based on sex and the language should be gender sensitive.



INTERVIEWING VICTIMS AND PERSONS COOPERATING WITH HR NGOS

Persons cooperating with human rights NGOs shall not be exposed to harm and the need to enjoy some form of protection against retaliation. The primary responsibility for their protection rests with the state, but NGOs as well as the person him/herself are also responsible for their protection. If the state is not willing or able to protect, then protection becomes a shared responsibility between the person and other actors.

We usually understand these persons to be victims of HR violations, but in fact the category of those who need to be protected is wider, as it comprehends:

- » Victims of human rights violations
- » Witnesses of human rights violations and other sources of information
- » Persons providing assistance to human rights monitors, like other NGOs or local NHRIs
- » Translators, even members of the same organization
- » Persons at risk by being associated with one of the above categories.

Protection is understood as a series of measures to prevent or minimize the risk one person can be exposed as well as reduced any threats to such person.

GUIDELINES ON INTERVIEWING VICTIMS

The following paragraphs present some indications on how to interview victims:

1. Confidentiality needs to be respected at all times

If this is not respected, the person we are interviewing can be exposed to harm, the NGO loses effectiveness in its work, and the reputation of the NGO is endangered. It takes very little for this to happen. This principle prevails over other interests, including those of prosecuting potential perpetrators for criminal offenses.

A few more points about confidentiality:

- » Persons interviewed need to know the policy about confidentiality.
- » Both identity of the persons interviewed and the information provided are covered by confidentiality.
- » Persons need to know also which measures are being taken to ensure confidentiality.
- » The informed consent of the persons cooperating is required for the use of the information. Such consent needs to be specific, not general. By informed consent, it is understood that the interviewed persons need to be aware of the potential implications of their decision to share information.
- » Special efforts when interviewing children, elderly or persons with disabilities need to be made to ensure they understand the concepts of confidentiality and consent
- » Giving consent does not waive the requirement for persons collecting the statement to assess potential implications for the safety of the persons cooperating. If such assessment is not positive, information should either not be disclosed or disclosed in a manner that removes the risk.

2. Do no harm

Interviewers need always to be aware of the potential harm they can cause to the persons they interview. Common sense and good judgment are a great help in these contacts. Lack of care, negligence can cause great damage to the persons who are being interviewed. Even contacting a person can place them at risk. This should be kept in mind at all times.

3. Do not raise expectations

Never make promises that you cannot keep, but always be aware of what you can effectively do. It is necessary to always explain the limits and possibilities of human rights monitors' work.

4. Participatory approach

By participatory approach, it is understood that persons being interviewed need to be asked their views and be involved in the threat assessment. It can be very well the case that those persons cannot effectively contribute, because in distress or because they overestimate their skills and underestimate the risks, nevertheless their views are required.

5. Know the local context

Be familiar with the local situation and local actors, be aware that often persons are operating in small communities, with close family ties.

6. Review regularly the situation

Revise the situation on a regular basis to assess whether there are concerns arising from that situation.

PLANNING AN INTERVIEW WITH A POTENTIAL VICTIM OR WITNESS

The planning phase means to determine in advance what information is required and what information needs to be collected from the interviewees. This requires to continuously balance between what needs to be asked and the risk of harm for persons who are cooperating. Knowledge and familiarity with the context are also important, especially when interviewing persons of another culture. Additional attention needs to be paid when interviewing persons of the other sex or where gender relationships in the family are different from ours.

When preparing the interview, it is also important to start thinking and identifying what type of answer could the national authorities have and how would they answer to such questions.

When conducting an interview, the priority is to interview the potential victim if it is possible to establish contact with him/her.

If security conditions don't allow to do so, it is also possible to receive information from the victim him/herself, without having a meeting in person. Incident reports and complaint forms which have been designed by the Ombudsman or by the UNHCR can be tools to collect such information without meeting directly the victim. This can be done if there are trusted intermediaries or conditions of anonymity.

CONDUCTING THE INTERVIEW

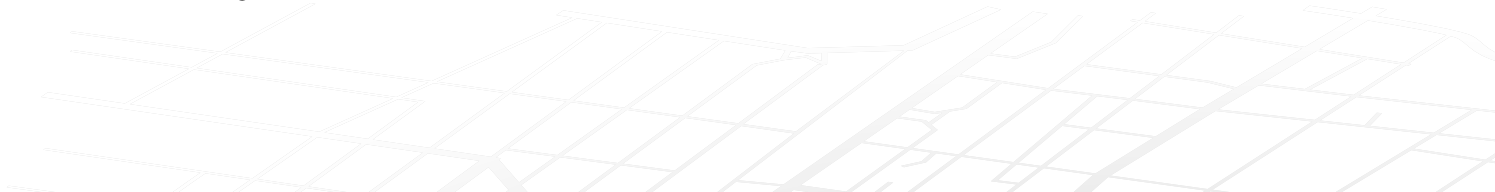
Before the interview

The choice of venue is particularly important, especially if the persons are residing in transit-centres when discretion cannot be guaranteed. If required, it might be necessary to have such interview in a remote location while taking precautions to ensure the safety of the interviewees. The views of the interviewee should be taken into account to see.

In a number of limited circumstances, and especially where the interviewer enjoys already significant authority, having an interview with a victim can have a protective impact on the victim himself/herself, as it sends the message to potential perpetrators that any potential violation is reported and followed up upon. This is more the case where national human rights authorities investigate or where international missions conduct such interviews.

Participants in the interview should be kept to a minimum: no more than two persons besides the interpreter is the optimum. All other persons should be asked to leave unless there is a specific request from the interviewee that the persons remain or it is required by the situation. The more people there are, the lower the level of confidentiality.

Gender issues should be taken into account, especially when interviewing persons originating from other cultures. The interviewee should be asked if s/he is comfortable with the gender of the interviewers. In some cases, it might not be possible to approach women directly but through intermediaries. Sensitive topics might require the presence of interviewers of the same gender as the interviewee.



Children should be interviewed only in exceptional circumstances after a careful assessment of the child's best interest. Trained interviewers in these cases should be present. Consent must be obtained by the parents or legal guardians as well as the child's consent.

Specific expertise should be present if possible. Interpreters should be briefed before the interviews to give details about the interview, confidentiality arrangements and background information. Needs of interpreters (breaks and pauses) should also be taken into account.

The initial available information should be used to identify whom to interview, i.e. victims or witnesses of the violation. Interviewers shall never "pay" for a testimony or give/promise rewards for those. This would alter the process of collecting information since it would encourage people to give false testimonies for the sake of receiving compensation.

An outline of the interview can help go through the different topics to be covered as well as a check list to make sure everything is covered. An interview form might be used. In our cases, the templates for incident reports/complaints are a good blueprint to follow.

Note taking and recording of the interview should be agreed with the interviewee. It is good to divide tasks between the two persons, one asking questions, the other taking notes. Digital recording devices and cameras are also allowed but they require the express consent of the interviewee. Video recorders should be avoided, as they present the highest level of risk for the interviewee.

During the interview

Once the preparations have been finalized, the interview can begin. A few principles need to be followed:

- » The first contact is very important. Make the persons feel at ease, offer water or some casual talk. Introduce yourself and your work. Explain the purpose of the interview, explain that interviewees are not obliged to answer all questions, if they don't feel comfortable they can avoid them.
- » Explain the principle of confidentiality and informed consent from the beginning. The consent shall be clearly recorded. Consent must be given also to share and use the information. There are three main situation that can occur *vis-à-vis* consent:
 - Consent to use the info internally – only for internal purposes to document statistically cases, corroborate other statements, background info and so on.
 - Consent to use the info internally and publicly – it can be used for internal and external purposes, like press releases, reports, advocacy. Unless specific consent is given however, the personal identifiable data shall not be disclosed.
 - No consent is given, the info cannot be used.
- » If it is our intention to follow up the case and share the info with other authorities, like international organisations, national Human Rights institutions, national authorities for follow up in that case an additional specific consent is required from the interviewee.
- » Do not make reference to statements made by other victims or witnesses. This could expose other victims or witnesses to retaliation. It could also make the interviewee worry if his statement is going to be reported to other victims. This applies unless specific consent was given to make reference to other contacts.
- » Be aware of potential traumas experienced by the person and of the risk of re-traumatizing them, by bringing back memories of the trauma. Ask the persons if they feel comfortable when you perceive that the person might be stressed.
 - Some useful tips when conducting the interview:
 - Let the person explain the story in their own words and formulate questions in an understanding tone.
 - Start with open-ended questions, without suggesting an expecting answer ("leading questions").
 - Remember the "5 Ws and H": "*What, where, when, who, why and how*"
 - Listen attentively, avoid as much as possible interruptions, even if it appears to be contradictory or repetitive. Note down gaps or points to be clarified later.
 - Ask specific questions to fill in gaps at the end of the interview.
 - In general, move from non-controversial questions to more sensitive issues as the interview proceeds.

- Credibility and reliability of the person should be assessed during the interview. If doubts arise, ask the same question in a different way. Be cautious of subjective factors before concluding that the interviewee is not reliable.
- At the end of the interview, ask the person if they have any feedback or question for the interviewee.
- Always take copies of any documents. Never take the originals.

Concluding the interview

The following steps need to be observed when concluding an interview:

- » Obtain informed consent from the person on the treatment of information
- » Discuss protection measures if necessary to avoid any possible harm
- » Inform the interviewee of what you can do and what you cannot do
- » Provide the interviewee with other useful contacts for different types of help
- » Discuss how to keep in touch and agree for a follow up meeting when required.

PROTECTING INFORMATION

There are different means to protect information once an interview is conducted, the highest level of security should be used as guiding criteria to collect and protect information.

A general rule is to separate the identity and personal details of persons mentioned in the report/interview from the actual interview report and rather use codes to identify the interviewees. A code should then be used to refer to the persons mentioned in the interview/report.

Cameras could be used to take a picture or film injuries for example, without disclosing the identity of the victim.

Hard copies of documents should be filed in a locked cabinet. Computer files also should be protected via passwords or encryption.

Information if possible should be then transmitted via a secure network.



DEVELOPING THE NETWORK

In this section, the goal is to design the information flows within the network and the most effective way of collecting and sharing information from the field.

The network of NGOs builds on a large variety of NGOs, from different geographical areas and with different experience. Some organisations have already significant experience in the field of human rights monitoring, other organisations have been focusing on other aspects of the assistance to refugees and migrants. Some organisations have country wide coverage, while others are more community based and specific to a certain area.

DEVELOPING THE NETWORK

For the purpose of creating the network, a mapping of the different organisations was conducted. The mapping tries to identify the primary expertise of each organization, together with their geographic presence on the territory.

The goal is to ensure the coverage of the whole territory and to identify the organisations which have the best expertise in each sector. At the same time, this approach would avoid overlapping and conflicts of competence between organisations.

The network is also a tool to learn and build the capacity of each organization. For this reason, the presence of 20 organisations with different expertise represents an important resource to complement the skills of all organisations. Whenever possible, the expertise in the network should be made available for the remaining organisations.

TERRITORIAL COORDINATION

For the purpose of designing the territorial competence of the network, we have identified the following areas:

Serbia:

- » North-West;
- » Belgrade region;
- » East;
- » South-East;
- » South-West.

Macedonia:

- » North;
- » South.

THEMATIC COORDINATION

It can occur that an issue (incident or a specific situation) arises in one area where there is no specific expertise to deal with this incident, i.e. for example, an unaccompanied minor seeks assistance from an organization which has an overall human rights focus, but no specific experience in supporting minors. In this case, thematic coordination is required and the organization which has first received the case, would seek advice and assistance from other organisations which have specific expertise in one sector.



This type of coordination is applicable also when it comes to preparing thematic reports which would cover specific topics and that can be used to pay attention to certain specific issues. By ensuring this horizontal coordination on specific issues, the NGOs in the network will transfer knowledge between themselves and contribute to the overall growth of the network.

In light of the existing expertise within the network, it has been possible to identify the following areas of expertise:

- » Legal Aid;
- » Minors;
- » Medical support;
- » Women support;
- » General Human Rights focus.

The last category refers to organisations that have a general Human Rights expertise and follow up a broad range of topics in the course of their activities.

COORDINATION AMONGST ORGANISATIONS

The distribution of organisations on the territory is uneven with larger or minor concentrations of NGOs in each area. Coordination of NGOs is therefore necessary to avoid overlapping or organisations chasing the same cases. A coordination mechanism in place is a tool that donors often see with favour. For the purposes of coordination, three criteria can be defined on how to sort out competences and organize the work:

- » If there is only one organization in the area and the cases falls within its expertise, the organization will naturally cover the case, be it an incident report or part of weekly reporting;
- » If the organization doesn't possess the specific expertise, it will seek assistance from an organization within the same area of responsibility to report and intervene about the specific case. If such expertise does not exist within the same area of responsibility, then it will be sought outside of it;
- » If one or more organisations have the same expertise, it might be wiser to agree in advance on a coordination mechanism, for example by splitting the area internally or thematically.

REFERRALS WITHIN THE NETWORK

The network, with its numerous organisations, is a primary resource to assist refugees and migrants along the route. For this reason, the primary assistance to refugees and migrants would occur amongst members of the network, based on the different expertise.

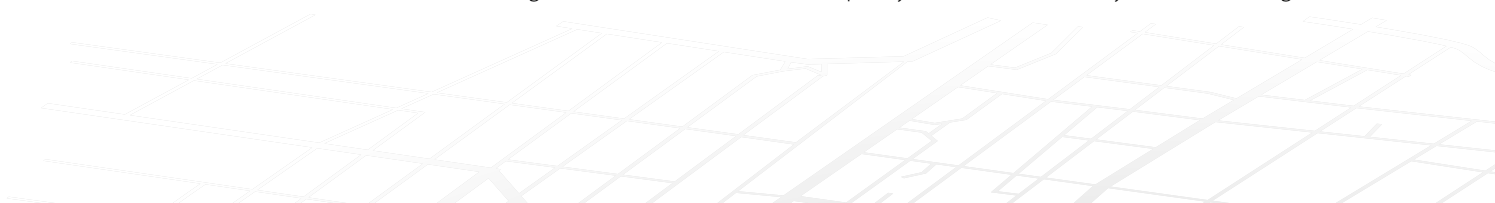
Such assistance can consist of legal aid, psychosocial support, family support, medical support and so on. The synergies between members of the network are numerous in this regard. The network should also adopt a standard form to keep track of cases within its members and internal referral procedures should be developed. The number of assisted cases should be reported in the weekly reports.

REPORTING WITHIN THE NETWORK

In addition to the reporting foreseen by the grant manual, it is proposed to introduce three types of reports which would cover issues specifically relevant to human rights monitoring.

The purpose is to ensure a regular flow of information and monitoring of the situation in the field. Three types of reports are therefore proposed:

- » **Incident reports:** these are the Protection Incident Reports which are submitted to UNHCR for their follow up and intervention. These reports have a confidential nature and they are drafted by the organization which first makes contact with the victim. A quality control from another organization with expertise on the specific topic is also envisaged in this regard. Quality control could be ensured for example in cases where there are uncertainties on legal provisions, or wherever there are minors or cases gender violence cases. Such quality control is necessary in case the organization



coming across the incident does not have the necessary expertise to assess the behaviour of the authorities. Incident reports are then securely stored and the essential data about incident reports are reported in the periodic reports but in such a way that it is not possible to identify the victims.

- » **Periodic Human Rights reports:** it is proposed that these reports are issued on a weekly basis and circulated within the network. These reports cover the most significant developments, from a human right point of view, in the work of each organization. They serve the purpose of keeping all organisations informed about the developments, both in Serbia and in Macedonia. They follow a pre-defined list of topics and they cover also the specific activities of each organization. Circulation of the reports is limited to the network. They will serve as basis for the leading human rights organizations to issue the monthly Human Rights reports which are envisaged by the project.
- » **Thematic reports:** these are *ad hoc* reports covering one specific topic. They can be proposed jointly by the network, or by a leading organization, to collect information across the network on specific issues relevant to the rights of refugees and migrants. They represent the chance to explore in depth certain issues and assess practices across the board. They can be limited to certain geographic areas (i.e. Serbia or Macedonia) and they can be used later on for further advocacy efforts by the network.





HELP ON THE ROUTE

SPECIAL PART

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Prof. dr. Nevena Vučković Šahović, Bojana Balević

Miroslava Jelačić
Legal Expert

TREATMENT OF MIGRANTS AND ASYLUM SEEKERS IN SERBIA

CURRENT SITUATION IN SERBIA

As a result of developments in 2017, it has become crystal clear that migration flows across the Serbian territory can no longer be viewed independently from the applicable migration regulations, unlike the situation in 2015 and 2016 when some political arrangements allowed for the free transit of migrants and actions of the authorities that were not entirely supported by applicable regulations or international standards. At the same time, Serbia has found itself in some sort of legal limbo. Even before the outbreak of the crisis, the applicable Serbian legislation governing migration and asylum, i.e. the Aliens Act ("Official Gazette of the RS", No. 97/2008) and the Asylum Act ("Official Gazette of the RS", No. 109/2007), had been fraught with many short-comings, which became even more pronounced during the crisis, while new legislation has not been adopted yet.

According to UNHCR, as of the 25 June 2017, there are currently about 6,000 refugees/migrants in the Serbian territory. Of that total, 93% of them are sheltered in reception/transit centres or asylum centres. In May 2017, there were 13 temporary reception facilities: Preševo, Bujanovac, Pirot, Dimitrovgrad, Bosilegrad, Divljana, Kikinda, Principovac, Adaševci, Obrenovac, Sombor, Subotica and Vranje, as well as five asylum centres: Banja Koviljaca, Bogovadja, Sjenica, Tutin and Krnjaca. In the January-May period of 2017, 2,922 persons expressed intentions to seek asylum in Serbia. As for their countries of origin, they mostly come from Afghanistan, Pakistan, Iraq and Syria. In the first three months of 2017, Serbia's Asylum Office interviewed 44 asylum-seekers of the total of 99 asylum applications submitted. The asylum procedures were discontinued in 22 cases regarding 36 asylum seekers, because they had left Serbia or withdrawn from the asylum procedure. No asylum applications were lodged in April, whereas two applications were dismissed, i.e. one application was rejected. From January to May 2017, the Asylum Office did not uphold any applications, granting refuge or subsidiary protection in Serbia.

Apart from persons whose legal status is subject to the Asylum Act, several other categories of persons may be identified: persons who have not expressed intentions to seek asylum, but who have been provided with accommodation in a reception/asylum centre; persons who have been issued decisions cancelling their stay, but who have nevertheless failed to leave Serbia; persons accommodated in a reception/asylum centre, but who have been placed on a waiting list pending entry to Hungary; persons who have been staying outside designated shelters without being registered by the competent Serbian authorities; persons who have opted to join a programme of assisted voluntary return; persons who have been returned from neighboring countries, mainly from Hungary, after attempting to illegally cross the border; persons whose asylum procedures have been completed, resulting in a final decision and who lack any other legal basis that would allow them to stay in Serbia or an appropriate document that would allow them to leave Serbia pursuant to a decision cancelling their stay, etc. Most of these people have not been subjected to any of the measures applicable in case of lack of legal grounds for staying in Serbia. That means that a certain number of persons are in a unique "legal limbo" because, under the regulations and the established practice, they may not fall into any of the categories of the persons staying either legally or illegally. The position of this category leads to legal uncertainty, paving the way to incidents of serious legal consequences, violations of rights, and most often also the impossibility of ensuring the protection of fundamental human rights of migrants, which exposes Serbia to the risk of potential violations of generally recognized rights before the European Court of Human Rights and other supervisory bodies. On the other side, it also poses a great security threat to the country.

LEGISLATION IN FORCE

In the context of the treatment of migrants and asylum seekers, it is equally important to have the knowledge of and to apply both international and regional human rights protection systems, as well as national legislation.

The Constitution of the Republic of Serbia, as the legal act of the highest order, contains a whole series of provisions of importance for the protection of migrants' rights. Significant are the provisions dealing with human and minority rights and freedoms. The catalogue of human rights under the Constitution provides for the right to asylum, and Article 57 provides that "any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia". Furthermore, it should be mentioned that Article 39, paragraph 3, stands out in its importance, stipulating that (...) a foreign national may be expelled only under a decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution.

The Constitution regulates the status of ratified international treaties and generally accepted rules of international law in the national law, stipulates that generally accepted rules of international law and ratified international treaties are an integral part of the legal order of the Republic of Serbia and are directly applicable. In addition to that, this constitutional provision obliges national institutions to apply these treaties directly when they regulate some situation differently from national legislation. This also means that the courts and other public authorities may directly apply the provisions of the international law, but in practice this is often not the case due to the imprecision of these provisions.

Besides the relevant provisions of the Constitution and specialized universal and regional norms and standards, every category of migrants is subject to the laws and strategies by means of which the state defines priority goals, their position and methods of exercising the guaranteed rights.

Within the past several years the Government of the Republic of Serbia has adopted a significant number of strategic documents, laws and bylaws with the view of defining and managing legal migrations and fight against the illegal ones. The documents are listed in the table below.

Law on Asylum of the Republic of Serbia

Official Gazette no. 109/2007

*Zakon o azilu Republike Srbije /
Закон о азилу Републике Србије*

Law on Asylum prescribes the principles, conditions, and procedure for the granting and cessation of asylum or temporary protection, as well as the status, rights, and obligations of asylum seekers and persons granted the right to asylum or temporary protection.

Law on Foreigners of the Republic of Serbia

Official Gazette no. 97/2008

*Zakon o strancima Republike Srbije /
Закон о странцима Републике Србије*

Law on Foreigners regulates conditions of the entry, movement and stay of foreigners as well as competences and affairs of the state administration authorities of the Republic of Serbia related to the entry, movement and stay of foreigners in the territory of the Republic of Serbia.

Migration Management Law of the Republic of Serbia

Official Gazette no. 97/2008

*Zakon o upravljanju migracijama Republike Srbije /
Закон о управљању миграцијама Републике Србије*

This Law regulates the principles, the competent authority for managing migration, accommodation and integration for certain categories of migrants and persons with some form of international protection, as well as the unified system for data collection and exchange in the field of migration management.

Law on State Border Protection

Official Gazette no. 97/2008 i 20/2015

*Zakon o zaštiti državne granice /
Закон о заштити државне границе*

Law on State Border Protection regulates state border protection, organization and method of protection. State border protection pursuant to this Law is control over crossing of the state border (hereinafter referred to as the border control) and providing the state border security in order to:

1. secure inviolability of the state border;
 2. prevent and detect criminal offences and detect and apprehend the perpetrators thereof;
 3. protect life and health of people and environment;
 4. prevent illegal migration.
-

When talking about current regulations, besides the specific provisions applicable to migrants (some of the categories of migrants), we need to take into account also the provisions of regulations which regulate different areas, like health-care, social welfare, administrative law, education etc., are applied in a subsidiary manner. For the purposes of this manual, in the Annex I, we list the most important national regulations relevant to understand the content, quality and scope of protection of certain rights, and/or for the treatment of migrants and asylum seekers in Serbia.

INSTITUTIONAL FRAMEWORK

Within the **Ministry of Interior**, the largest scope of responsibilities rests with the organizational units of the Border Police, the Directorate for Administrative Affairs, regional police departments and police stations.

- » The Directorate for Administrative Affairs is in charge, among other things, for the implementation of readmission procedure in accordance with agreements concluded between Serbia and the EU as well as with the countries in the region.
- » Within the Border Police Directorate, the Department for Foreigners is responsible for the issue of status of foreigners legally residing in the RS, as well for the control of movement, residence and measures for all foreign nationals who are in the RS. The Asylum Office is an organizational unit of the Border Police, which conducts the first instance asylum procedure. Additionally, in most cases representatives of Mol establish the first contact with migrants when they are detected on the territory of the RSB (local departments for foreigners, the organisational unit within the local Police Departments) and regional centres (the organisational units within the Border Police).

The Ministry of Labour, Employment, Veteran and Social Affairs exerts its competence through the Centre for Social care and other institutions of the social protection system. Furthermore, within the jurisdiction of the Ministry of Labour, Employment, Veteran and Social Affairs, there is the obligation to provide accommodation to every individual or family in need of immediate help and ensuring safety in risky situations (urgent intervention).

- » The Centre for Social Care is the state body that operates within the social welfare system and exercises public authority in the field of social and family protection. In relation to migrants, the most important role of the Centre for Social Care is to set a temporary guardian for unaccompanied minors. The competent centre is determined on the basis of the territorial jurisdiction covering the area where the minor is found or situated.
- » The units for accommodation of unaccompanied foreign minors are operating within the Institution for Education of Children and Adolescent in Belgrade and Niš. They are the institutions of social protection responsible for primary reception of UAMs foreigners. The length of stay UAMs in the units ranges from 7 to 14 days, during which period the basic needs of the minors are met.
- » The Centre for Human Trafficking Victims Protection is an institution of social protection and it conducts assessment of the situation, needs, strengths and risks of trafficking victims, identifies the requirements for and provides adequate assistance and support to the victims of trafficking for the purpose of their rehabilitation and reintegration.

With the adoption of the Asylum Act, the **Commissariat for Refugees and Migration (KIRS)** has received the additional competence of providing accommodation and basic living conditions for asylum seekers. In 2012, the KIRS competences have been extended to include persons with recognized refugee status and beneficiaries of subsidiary protection according to the Law on Asylum and irregular migrants. In relation to asylum-seekers, the KIRS manages the reception centres, providing housing and basic living conditions for asylum-seekers pending a final decision. In terms of irregular migrants the KIRS is responsible for proposing a program to develop a system of measures aimed at families of foreigners illegally staying on the territory of the Republic of Serbia, as well as proposing programs to support the voluntary return of foreigners who are illegally staying on the territory of the Republic of Serbia to their country of origin. In addition, the KIRS is in charge for meeting the housing needs and integration requirements of persons with refugee status and beneficiaries of subsidiary protection, and is providing primary accommodation in designed collective centres to returnees under the Readmission Agreement.

Other relevant actors

International organizations and non-governmental organizations could be considered to a lesser or greater extent as part of an established system of reception and protection of migrants and asylum seekers. International organizations are providing various forms of protection and assistance to migrants and asylum-seekers (humanitarian, psychological, medical and legal assistance) and invest significant funds in improving the existing system (especially in terms of translation, education, transportation, improving infrastructural facilities, etc.).

An important role in the established system is played also by numerous non-governmental organizations within the area of their expertise, providing, inter alia, various forms of direct assistance: humanitarian, medical, psychosocial and legal assistance.

The situation in the field varies from time to time and it is quite different in certain areas of the country so it is quite important to have updated information and to coordinate activities with all relevant actors involved.

KEY QUESTIONS RELATED TO TREATMENT OF MIGRANTS AND ASYLUM SEEKERS IN SERBIA

Which category of migrants are we talking about and what characterizes them?

According to current indicators, several categories of migrants are most frequently identified: refugees, asylum seekers, (irregular) migrants, smuggled migrants, returned migrants. Also, in the context of such movements, special emphasis is placed on vulnerable categories of migrants like unaccompanied minors, women, human trafficking victims and families with children.

When it comes to some common features of the migrant population, the majority of migrants do not possess personal documents; their identity is established on the basis of their statements and they enter the territory of Serbia in some illegal way, most often using the services of smugglers. They differ by the reasons of their leaving the country of origin: fear of persecution, war conflicts, social (custom) norms, as well as of poor economic and social conditions in their countries. Irrespective of the reasons, they travel together and use the same routes and movement modus. While on the road, the transit countries treat them differently. Their experiences from travel testify to the fact that very often they find themselves in situations of extreme vulnerability, exposed to various traumatic experiences, abuse and neglect and to the risk of becoming part of criminal networks.

Should all migrants be treated equally?

There are certain rights, protection mechanisms that are prescribed and implemented independently from the classification of migrants into certain categories. The imperative is to ensure to every migrant the enjoyment of the fundamental human rights and freedoms. Only later on should one take into consideration the reasons for which and the manner in which certain individuals have entered the territory of a country, since the stated circumstances condition their different position, protection needs, as well as the rights and obligations, and different legal framework which applies to them. Differences among the reasons for migration are not always clear and easily noticeable and the limits set by the internal legal order with regards to the treatment of different categories of migrants call for special caution.

Regardless of status, all persons staying on the territory have the right to satisfy the basic living conditions, including accommodation, primary health care, translation, security. Additionally, beside the ratified international treaties, according to national provisions the non-refoulement principle is applicable to all categories of migrants.

What is most important related to first contact with migrants?

The first contact with migrants is established either at the border or after a person enters a territory. When deciding on the right to enter territory, Border Police is obliged to enable access to the territory to certain categories of migrants (in the first place to refugees, persons in need for international protection, asylum seekers, unaccompanied children, human trafficking victims). Similarly entry must not be denied in case the denial would in the concrete case lead to the violation of the principle of non-refoulement.

On the occasion of the first contact it is important to see the **urgent needs** of the migrant in the first place, and then proceed with his/her identification procedure. The provision of medical assistance and the satisfaction of basic necessities must be given priority in relation to migration issues. All persons who establish the first contact with migrants are obliged to act accordingly.

In case the person who establishes the contact does not speak any language in which he/she could **communicate** with the migrant, in ideal circumstances, a trained interpreter will be present during the first interview (speaking a language that the migrant understands). A persons found in a group, only exceptionally, as the measure of the last resort, can be used as interpreter, but only for the collection of basic pieces of information which are necessary for the satisfaction of

the urgent needs, while the identification procedure must be conducted using the methodologies which guarantee the independence and impartiality of the procedure.

Besides recording the data that the migrant gave about himself and about the circumstances of his arrival, particularly important are **verbal and non-verbal indicators** which can point out to the category of migrants and his belonging to some of particularly vulnerable categories - for instance, victim or perpetrator of a criminal act of human trafficking, and/or of smuggling migrants - so called, symptomatic personal appearance. The essential elements of the symptomatic personal appearance are psychological and physiological components of human personality, i.e. body reaction to stressful situations and fear. They are manifested as accelerated breathing, paleness, increased sweating, drying mouth, muscular stiffness, shaking, nervousness, rolling eyes, enlarged pupils, frequent movement of arms and legs, characteristic changes of voice colour, and similar.

Having in mind that besides the direct way of expressing the need to request asylum, a migrant can express his/her intention by means of various conclusive actions, yet it might remain unnoticed due to the difficulties in communication and his/her specific psychological condition. It is important, in case of doubt as to whether a person seeks asylum, to try **to inform about the possibility to ask for the protection in Serbia**. Particular attention should be paid to the persons coming from the countries in which there is some kind of internal or international armed conflict, as well as from the countries that have already been recognized as the countries of origin of a large number of persons seeking international protection.

Asylum procedure in short

The procedure for seeking asylum in Serbia is as follows: a migrant may 'express the intention to seek asylum in Serbia' within Serbian territory or at border crossings, following which he is recorded by the officials of the Ministry of the Interior before whom he or she has expressed the intention and given a certificate of having done so. The asylum seeker is then expected to go to his designated centre, or to notify the Asylum Office should he wish to stay at private accommodation.

Upon arrival at the centre or private accommodation, the asylum seeker waits for the Asylum Office staff to register him or her, issue him or her personal identity documents for asylum seekers and take his asylum application. The Asylum Office is under the legal obligation to decide on the application within two months of its submission, during which time one or more hearings must be held in order to establish all of the facts and circumstances relevant to rendering a decision.

Appeals against Asylum Office decisions are reviewed by the Asylum Commission, an independent body appointed by the Government for a four-year term. If the Commission fails to render a decision on the appeal within 60 days of the day of its receipt the asylum seekers may initiate an administrative dispute before the Administrative Court in order to challenge the final decisions of the Asylum Commission.

Can 'economic migrants' or returned persons be denied access to the asylum procedure?

Access to the procedure must be guaranteed for all, regardless of the circumstances the authorities know of the person concerned. Therefore, nobody may be a priori denied access to the asylum procedure/possibility to express the intention to seek asylum/submit an application in Serbia. The asylum procedure serves for examining whether there are justified reasons to grant asylum to a person or whether the person is an economic migrant, or a person for whom it may be determined that there are some of the elements which may deny him the right to be granted a refugee status or another form of protection. Denying access to the asylum procedure needs also to be considered in the context of the non-refoulement principle.

Treatment of irregular migrants

When acting towards irregular migrants, one most often tends to neglect the fact that in relation to this category there is also the need to observe and safeguard fundamental human rights. This means that it is necessary, above all, to enable the satisfaction of all urgent needs, and then also that in relation to these persons too there is a duty of issuing notifications about the status, further actions and measures to be undertaken towards them, as well as of the rights and obligations which result from their status, during their stay in the territory of Serbia.

As a rule, if a foreign national is found inside the territory of Serbia, he is escorted to the competent regional Police department, which then takes the necessary actions in order to regulate his/her status or initiate the appropriate procedure in front of misdemeanor courts. It should be noted that the situation of mass influx of people from war-affected areas, led to the recognition of a normative obligation of identifying persons in need of international protection by the competent authorities, which is commendable. From the angle of the procedure being conducted for illegal entry or stay in the

territory, it is particularly important that the ignorance and lack of knowledge of the party is not to the detriment of the rights of irregular migrants, that through an interpreter the party be enabled to use his/her language during the procedure, that the opportunity should be offered for the party to give the statement on all the facts and circumstances he/she is charged with, as well as to express all the facts and circumstances that are in his/her favor. Special attention must be paid to determining the veracity of all the facts of importance for the passing of the judgment, and especially to the observance of the non-refoulement principle and the principle of impunity for illegal entry or stay, in case the need for asylum is recognized.

Also, for persons who were not permitted entry into the country or who have been issued an order of expulsion or removal from the country, but cannot be forcibly removed immediately, or who have not been identified or did not possess a travel document, as well as asylum seekers if there is any reason for limiting the freedom of movement stipulated in the Law on Asylum there is the possibility to order detention in the Shelter for Foreigners. No migrant who is the object of sanctions, or restriction of movement, shall be placed in unequal position because of race, skin colour, sex, language, religion, political and other beliefs, national or social origin, financial standing, education, social status or other personal trait. In accordance to that, migrants must be treated identically and the same corpus of rights which is guaranteed to other persons, who are the object of sanctions/measures being pronounced against them.

ANNEXES

Annex 1. List of laws and by-laws relevant for treatment of migrants and asylum seekers

- » Constitution of the Republic of Serbia;
- » Family Law;
- » Law on Civil Procedure;
- » Law on Asylum;
- » Law on Foreigners;
- » Migration Management Law;
- » Law on the State Border Protection;
- » Law on Employment of Foreigners;
- » Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorization;
- » Bilateral agreements on the readmission;
- » Decision of the Government of the Republic of Serbia on establishing the List of Safe Countries of Origin and Safe Third Countries;
- » Rulebook on the Asylum Centre House Rules;
- » Rulebook on the Records of People Accommodated in Asylum Centres;
- » Rulebook on the Contents and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection;
- » Rulebook on Social Assistance to Asylum Seekers and People Granted Asylum;
- » Rulebook on Accommodation and Basic Living Conditions in Asylum Centres;
- » Rulebook on Health Examinations of Asylum Seekers on the Admission to Asylum Centres;
- » Bylaws -Law on Foreigners and Law on Protection of State Border;
- » Law on General Administrative Procedure;
- » Law on Anti-discrimination;
- » Criminal Code;
- » Law on Social Protection;
- » Law on Police;
- » Law on Gender Equality;
- » Law on Prevention of Discrimination against Persons with Disabilities;
- » Law on the Fundamentals of the Education System;

- » Law on Pre-School Education;
- » Law on Primary Education;
- » Law on Higher Education;
- » Law on Associations;
- » Law on Labour;
- » Law on Health Care;
- » Law on Health Insurance;
- » Law on Public Health.

Annex 2. Novelties imposed by Draft Law on Asylum and Temporary Protection regarding the definition of terms

Law on Asylum	Draft Law on Asylum and Temporary Protection
<p>A refugee shall be understood to mean a person who, on account of well-founded fear of persecution for reasons of race, sex, gender, language, religion, nationality, membership of a particular social group or political opinions, is not in the country of his/her origin, and is unable or unwilling, owing to such fear, to avail him/herself of the protection of that country, as well as a stateless person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country.</p>	<p>A refugee shall be understood to mean a person who, on account of well-founded fear of persecution for reasons of race, sex, gender, gender identity, gender-based violence, language, religion, nationality, membership of a particular social group or political opinions, is not in the country of his/her origin, and is unable or unwilling, owing to such fear, to avail him/herself of the protection of that country, as well as a stateless person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country.</p>
<p>Subsidiary protection shall be understood to mean a form of protection the Republic of Serbia grants to an alien who would be subjected, if returned to the country of origin, to torture, inhumane or degrading treatment, or where his/her life, safety or freedom would be threatened by generalized violence caused by external aggression or internal armed conflicts or massive violation of human rights.</p>	<p>Subsidiary protection shall be understood to mean a form of protection granted by the Republic of Serbia to a foreigner who would be, if returned to the country of origin or habitual residence, subjected to serious harm, and who is unable or unwilling to avail himself/herself of the protection of that country.</p> <p>Article 25 stipulates the term serious harm.</p>
<p>Family member shall be understood to mean a minor child, adopted child or step-child, who is not married, a spouse, provided that the marriage was contracted before the arrival in the Republic of Serbia, as well as a parent or an adoptive parent legally obliged to support him/her.</p> <p>The status of a family member may also be granted to other persons in exceptional circumstances, particularly taking into account the fact that they were supported by the person who has been granted refuge or subsidiary protection.</p>	<p>Family members are spouses who entered into marriage before arrival to the Republic of Serbia, an unmarried partner in accordance with the regulations of the Republic of Serbia, their minor children, adopted minor children or minor step-children, as well as parents and another adult who is able, whether by law or by the practice, to take care of the person who has been granted asylum.</p> <p>A family member of a person who has been granted a refuge or a subsidiary protection may, exceptionally, be another person, where the age and material and psychological dependence of this person will particularly be taken into account, including his/her health condition, social situation, cultural background and other similar issues.</p>
<p>Unaccompanied minor shall be understood to mean an alien under 18 years of age who was unaccompanied by parents or guardians on his/her arrival in the Republic of Serbia, or 2 who became unaccompanied by parents or guardians after arriving in the Republic of Serbia.</p>	<p>Unaccompanied minor shall be understood to mean an alien under 18 years of age who was unaccompanied by parents or guardians or adult person responsible for that child on his/her arrival in the Republic of Serbia, or who became unaccompanied by parents or guardians or adult person responsible for that child after arriving in the Republic of Serbia.</p>

<p>Safe country of origin shall be understood to mean a country from a list established by the Government whose national an asylum seeker is, and if the person concerned is stateless, a country where that person had previous habitual residence, which has ratified and applies international treaties on human rights and fundamental freedoms, where there is no danger of persecution for any reason which constitutes grounds for the recognition of the right to refuge or for granting subsidiary protection, whose citizens do not leave their country for those reasons, and which allows international bodies to monitor the observance of human rights;</p>	<p>A country shall be considered as a safe country of origin where, on the basis of the legal situation, the application of the law, and the general political circumstances, it is clear that there are no acts of persecution referred to in Article 24 of this Law or risk of suffering serious harm within the meaning of Article 25, paragraph 2 of this Law, which shall be established on the basis of information on: 1) the relevant laws and regulations of the country, and the manner in which they are applied; 2) observance of the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly Article 15, paragraph 2 of the European Convention, the International Covenant for Civil and Political Rights, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 3) respect for the non-refoulement principle; 4) application of effective legal remedies. The information referred to in paragraph 1 of this Article shall be collected from various relevant sources, particularly from EASO, UNHCR, the Council of Europe, and other relevant international organisations. The Government shall determine a list of safe countries of origin, and shall revise it, as needed, taking into account the provisions of paragraph 1 of this Article, at the proposal of the Minister of Foreign Affairs.</p>
<p>Safe third country shall be understood to mean a country from a list established by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees (hereinafter referred to as: the Geneva Convention and the Protocol), where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhumane or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened;</p>	<p>A safe third country shall be a country where the applicant is safe from persecution referred to in Article 24 of this Law, or the risk of suffering serious harm as referred to in Article 25, paragraph 2 of this Law, where he/she enjoys the benefits prescribed by the non-refoulement principle, and where he/she has a possibility to access an efficient procedure for granting and enjoying protection in accordance with the 1951 Convention on the Status of Refugees (hereinafter: the 1951 Convention).</p> <p>The eligibility for the application of the safe third country concept shall be established for each application individually, examining whether a country meets the conditions specified in paragraph 1 of this Article, and whether there exists a connection between that country and the Applicant on the basis of which it could be reasonably expected that he/she could seek asylum in that country. The Applicant shall be informed in good time of the application of the safe third country concept, so that he/she is able to challenge this in relation to paragraphs 1 and 2 of this Article, in view of his/her personal circumstances. The Asylum Office shall issue the Applicant whose Application has been dismissed in accordance with Article 42, paragraph 1, point 2 of this Law, a document in the language of the safe third country, informing the competent state authorities of that country that his/her Application has not been examined in substance in the Republic of Serbia. If the safe third country refuses to accept the foreigner, a decision shall be rendered on the substance of the Application in accordance with the provisions of this Law.</p>

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Legal Expert

TREATMENT OF MIGRANTS AND ASYLUM SEEKERS IN MACEDONIA

CURRENT SITUATION IN MACEDONIA

Being at the center of the Western Balkan mixed migration route, in 2015 Macedonia faced tremendous increase in the number of refugees arriving from the southern border with Greece, registering the highest number of refugees and migrants that entered Europe reaching one million before the end of December. In the beginning of 2016, the influx of refugees and migrants arriving to Macedonia continued with the same intensity, but only until February-March, when a number of policy changes affected the situation of the refugees and migrants travelling through the Western Balkan Route, culminating with the closure of the route on 7 March 2016. Consequently, only 762 asylum applications were lodged in Macedonia during 2016.²⁰

In 2017 the Western Balkans route in the country remained closed. Refugees were not allowed to use the route along the humanitarian corridor to transit through the country. Most of them use smugglers and unofficial smuggling routes to transit through the country towards Serbia without arriving at the transit centers. As a result, only 130 asylum applications were lodged as of 31 October 2017.²¹

As a response to the irregular movements and migrant smuggling, the Macedonian authorities either push back the refugees and migrants to Greece or detain them at the Reception Centre for Foreigners in Skopje.

Namely, refugees and migrants that are apprehended at or near the southern border by the police are taken to the Transit Center Vinograd and then following their fingerprinting, are being pushed back to Greece. All of the push-backs are carried out without any form of examination of each persons' individual situation, as they take place outside of any legal framework prescribed by national legislation. The refugees and migrants who are pushed-back are not issued with expulsion decisions. As a result, the refugees and migrants who are pushed back have been deprived of their most basic safe-guards including in terms of access to information and access to a remedy with automatic suspensive effect to challenge their removal.²²

Concerning the issue of immigration detention, the available data indicates that 1346 persons were detained for immigration related purposes in Macedonia in 2015, and 389 in 2016.²³ According to the interviewed detainees by the Macedonian Young Lawyers Association (MYLA), all of them were apprehended while travelling with migrant smugglers. The detained individuals were told by the police that they were being held in detention as witnesses in the criminal procedures against the smugglers.²⁴

As of 31 October 2017 the number of persons of concern in Macedonia is approximately 700. Of the total number, more than 600 persons are ethnic Roma, Ashkali and Egyptians who fled the Kosovo conflict in 1999. The rest of the persons have submitted their asylum requests in 2017 and 2016 or reside in the transit centres without any legal status. A large part of them originate from Syria and Afghanistan. The other counties of origin from where the persons of concern come

20 Data obtained by the Macedonian Young Lawyers Association (MYLA). MYLA is an independent, nonprofit professional organisation in Macedonia which provides free legal aid and represents asylum seekers, refugees, stateless persons, and other persons of concern in procedures related to asylum, legal residence, and other social rights.

21 Ibid.

22 Macedonian Young Lawyers Association, Written submissions on behalf of the Macedonian Young Lawyers Association (MYLA) as third party intervener in the case of A.A. and Others v. F.Y.R. of Macedonia available on: <http://myla.org.mk/third-party-intervention-to-the-european-court-of-human-rights-in-the-case-a-a-and-others-v-f-y-r-macedonia/> [accessed 20 November 2017].

23 Macedonian Young Lawyers Association, *Irregular Migration in Numbers*, available at: <http://myla.org.mk/irregular-migration-in-macedonia-in-numbers/> [accessed 20 November 2017].

24 Macedonian Young Lawyers Association, *MYLA Mid-year Report on Immigration Detention in Macedonia – January-June, 2017* available at: <http://myla.org.mk/wp-content/uploads/2016/09/MYLA-Mid-year-Report-on-Immigration-Detention-in-Macedonia-January%E2%80%94June-2017.pdf> [accessed 20 November 2017].

are: Algeria, Bangladesh, India, Iran, Iraq, Pakistan, Russia, Turkey etc.²⁵ At present, a relatively low number of refugees and migrants reside in the transit centres.²⁶

LEGISLATION IN FORCE

According to the Constitution of the Republic of Macedonia,²⁷ the foreigners in Macedonia enjoy freedoms and rights guaranteed by the Constitution, under conditions determined by law and international agreements. Macedonia guarantees the right of asylum to foreign nationals and stateless persons expelled because of their democratic political convictions and activities. The extradition of aliens can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity.

The Law on Foreigners and the Law on Asylum and Temporary Protection constitute the key legal resources when it comes to the treatment of migrants and asylum seekers. Other important resources are: Law on Border Control, Law on General Administrative Procedure, Law on Administrative Disputes, Law on Free Legal Aid, Law on Social Protection, Law on Health Insurance, Law on Family, Law on Citizenship of the Republic of Macedonia, Criminal Code, Manual for the Standard Procedure for Reception of Asylum Seekers in the Republic of Macedonia, National Strategy on Migration, Asylum and Integration (2011–2020), Standard Operating Procedures for Processing Vulnerable Categories of Foreign Nationals,²⁸ Standard Operating Procedures for Dealing with Unaccompanied and Separated Children.²⁹

Law on Foreigners

The Law on Foreigners³⁰ regulates the requirements for entry, exit and stay of all foreigners in Macedonia and their rights and obligations, except for foreigners who seek protection from Macedonia in accordance with the Law on Asylum and Temporary Protection.

According to law, there are six reasons for expulsion of a foreigner from Macedonia:

1. If a foreigner is sentenced to imprisonment of minimum one year with a legally valid decision,
2. If a foreigner poses a serious threat to the public order, national security or international relations of the Republic of Macedonia,
3. If there are serious reasons to believe that the foreigner committed serious crimes, especially crimes related to production and releasing narcotic drugs, psychotropic substances and precursors, or there is a solid evidence of his/her intention to commit such crimes on the territory of Macedonia,
4. If the reasons for protection of the public health require so,
5. If a foreigner stays illegally in the Republic of Macedonia, or
6. If a foreigner commits several repeated or more serious violations of the provisions of the Law on Foreigners.

A foreigner who has to be forcibly returned from the country will be taken by the authorized officers of the Ministry of the Interior to the state border, sent over the border, handed over to the representatives of the foreign country whose citizen he/she is or to the representatives of the foreign country from which he/she arrived.

For the purpose of ensuring the forcible return, a foreigner can be detained by the Ministry of the Interior for a maximum of 24 hours. The foreigners who for whatever reason cannot be removed from the territory of Macedonia within this time limit are detained at the Reception Centre for Foreigners until the reasons preventing his/her deportation from the territory of the Republic of Macedonia cease to exist, but not longer than 12 months.

25 Data obtained by the Macedonian Young Lawyers Association (MYLA).

26 For instance, according to MYLA, on 31st October 2017, 9 refugees and migrants were present at the transit centre Tabanovce and only 3 persons in Vinojug.

27 Constitution of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia* No. 52/91, available at: [http://eudo-citizenship.eu/NationalDB/docs/MAC%20Constitution%20\(amended%20by%20XX\)%20eng.pdf](http://eudo-citizenship.eu/NationalDB/docs/MAC%20Constitution%20(amended%20by%20XX)%20eng.pdf) [accessed 20 November 2017].

28 Standard Operating Procedures for Processing Vulnerable Categories of Foreign Nationals.

29 Standard Operating Procedures for Dealing with Unaccompanied and Separated Children.

30 Law on Foreigners, *Official Gazette of the Republic of Macedonia*, No. 35/2006, 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013, 148/2015 and 217/2015, available at: <http://www.refworld.org/docid/44b2668a4.html> [accessed 20 November 2017].

Establishing the identity is another legal ground for detention of foreigners at the Reception Centre for Foreigners. Namely, if a foreigner refuses or is unable to prove his/her identity can be detained for the purposes of establishing his/her identity for a period no longer than 12 hours. Provided that it is impossible to establish the foreigner's identity within 12 hours, the authorized officers of the Ministry of the Interior shall file a request for initiation of a misdemeanour procedure with the competent court. The foreigner can, upon a decision of a court, be detained in the Reception Centre until information on his/her identity is supplied.

Law on Asylum and Temporary Protection

Macedonia is party to the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. The Law on Asylum and Temporary Protection (LATP)³¹ constitutes the key asylum national law and provides the highest safeguards in the protection of asylum seekers, refugees and persons under subsidiary protection.

The LATP incorporates many key provisions of the 1951 Convention and the provisions on subsidiary protection in the law are in conformity with relevant EU standards. The law also provides for certain rights up to the standard of nationals for those who benefit from international protection, as well as free legal aid during all stages of the asylum procedure.³²

The Law on Asylum and Temporary Protection has been amended eight times since its adoption in 2003. Some of the major recent amendments which were adopted on 18 June 2015, introduced a procedure for registration of an intention to submit an asylum application at the border and allowed the persons to enter and be in the country legally for a short timeframe of 72 hours, before formally registering their asylum application. The law was again amended on 11 April 2016, to the effect that an application made by a person from a safe third country³³ would be considered as manifestly unfounded. The amendments also provided that the principle of family reunification may only be exercised three years after obtaining refugee status. These provisions are incompatible with the Asylum Procedures Directive and the Family Reunification Directive.

At present, an inter-ministerial working group prepares new Draft Law on International and Temporary Protection, envisioned to be enacted in 2018.

INSTITUTIONAL FRAMEWORK

The Ministry of Interior (MoI) and the Ministry of Labor and Social Policy (MLSP) have a key role in the treatment of migrants and asylum seekers in Macedonia.

The Sector for Border Affairs and Migration at the Ministry of Interior, the Mobile Unit for Combating Cross-border Crime and Compensatory Measures, the Regional Centres for Border Affairs and police stations are part of the Public Security Bureau and have role in the management of the borders and irregular movements. The Reception Centre for Foreigners in Skopje which is the only immigration detention facility in Macedonia is under the jurisdiction of the Sector for Border Affairs and Migration.

The Sector for Asylum at the Ministry of Interior is the primary governmental body responsible for implementation of the reception and asylum procedure, including escorting the asylum-seeker(s) to the country's only reception centre for asylum-seekers. The asylum procedure is carried out in accordance with the Law on Asylum and Temporary Protection and the Law on General Administrative Procedure.

The Department for Asylum, Migration and Humanitarian Aid at the Ministry of Labor and Social Policy is responsible for the accommodation, the exercise of the rights of social and health protection of the asylum seekers. The MLSP shall inform the asylum seekers for their rights in a written form in a language which is reasonably assumed that they understand or orally with the help of an interpreter. The Ministry of Labor and Social Policy shall take care of the provision of means of

31 Law on Asylum and Temporary Protection, *Official Gazette of the Republic of Macedonia*, No. 49/2003, 66/ 2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016 available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=53072de34> [accessed 20 November 2017].

32 UN High Commissioner for Refugees (UNHCR), *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*, August 2015, available at: <http://www.refworld.org/docid/55c9c70e4.html> [accessed 20 November 2017].

33 According to these provisions, a safe third country, a member state of the European Union, a member state of the North Atlantic Treaty Organization (NATO) or a member state of the European Free Trade Association (EFTA) shall be a state that have ratified and applies the provisions of the 1951 Convention relating to the Status of Refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the standards for effective legal instrument, as well as that has an established procedure for asylum prescribed by law and in accordance with the 1951 Convention relating to the Status of Refugees.

subsistence and healthcare for the asylum seekers, while they are accommodated in the Reception Center or another place of accommodation assigned by this Ministry.

The UN High Commissioner for Refugees also plays an important role when it comes to migrants and asylum seekers. The competent bodies shall allow access to the UNHCR to the information on individual requests for recognition of the right to asylum, for the course of the procedure, and for the decisions adopted, upon a previously given consent by the asylum seeker.

The representatives of the High Commissioner for Refugees shall present their views to the competent bodies, related to the individual requests for recognition of the right to asylum, in any phase of the procedure for recognition of the right to asylum.

The asylum seekers also have right to communicate with persons who provide legal assistance, with the representatives of the High Commissioner for Refugees, as well as with non-governmental humanitarian organizations in all phases of the procedure.

IMMIGRATION DETENTION

The Reception Centre for Foreigners in Gazi Baba, Skopje is the facility where irregular migrants are detained. In the most of the cases they are victims of migrant smuggling and potential asylum seekers. The centre is of closed type and access for the humanitarian non-governmental organization is limited.

Over 2016 and 2017, MYLA conducted regular weekly visits to the Reception Centre for Foreigners. According to MYLA's findings, at least 438 individuals were affected by immigration detention in Macedonia during 2016. Most of the detainees were male (89,7%), with only 45 (10,2%) female. The vast majority were between the ages of 18-59 (94,2%). During the year, 25 children were detained, of which one was separated from his family and another one was unaccompanied. No elderly persons were detained.³⁴

In 2017, at least 82 individuals were detained as of 31 October 2017. All detainees were male and between the ages of 18-59, with the exception of one unaccompanied child. The majority of the detainees originated from Pakistan, Afghanistan, and Syria.³⁵

According to the available information, all of them were apprehended while travelling with migrant smugglers. The detained individuals were told by the police that they were being held in detention as witnesses in the criminal procedures against the smugglers. However, under the applicable legal framework and the detention decisions provided to the persons, establishing identity and forced removal are the only legal grounds for detention. Most of the detainees complained about the lack of information on the grounds and length of detention. There is a lack of interpretation services to ensure that detainees fully understand their legal status, the decisions that concern them, and the documents they are instructed to sign.³⁶

The conditions in the Reception Centre have been criticized by a number of independent observers. Among others, the UN Committee Against Torture has recommended that the former Yugoslav Republic of Macedonia take steps towards improvement of the conditions in Gazi Baba, including by "[immediately taking] measures to put an end to the inhuman and degrading conditions of detention in the Gazi Baba detention center, for example by closing it, establishing alternative punishments, and similar actions". The Ombudsman of the Former Yugoslav Republic of Macedonia has reported that accommodation arrangements for persons with specific needs in detention do not meet international standards, recommending that the Mol at least put in place psychosocial programmes and improve daily recreational activities available to detainees. The Red Cross is the only civil society organization with a daily presence in the detention centre, providing first aid and medical assistance on a daily basis.³⁷

34 Macedonian Young Lawyers Association, *Annual Report on Immigration Detention in Macedonia – 2016*, available at: <http://myla.org.mk/wp-content/uploads/2016/09/MYLA-2016-Report-on-Immigration-Detention-in-Macedonia.pdf> [accessed 20 November 2017].

35 Data obtained by MYLA.

36 Macedonian Young Lawyers Association, *MYLA Mid-year Report on Immigration Detention in Macedonia – January-June, 2017* available at: <http://myla.org.mk/wp-content/uploads/2016/09/MYLA-Mid-year-Report-on-Immigration-Detention-in-Macedonia-January%E2%80%94June-2017.pdf> [accessed 20 November 2017].

37 UN High Commissioner for Refugees (UNHCR), *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*, August 2015, available at: <http://www.refworld.org/docid/55c9c70e4.html> [accessed 20 November 2017].

The persons detained in the immigration detention centre faced obstacles in accessing the asylum procedure. Detainees were not permitted to submit an asylum application prior to providing statements as witnesses before the court in the criminal procedures for migrant smuggling. All of them have been able to submit asylum applications at the time of release.³⁸

ASYLUM PROCEDURE

First instance procedure

According to the Law on Foreigners, a foreigner who shows an intention to seek asylum should not be denied entry to the country. In accordance with the June 2015 amendments to the Law on Asylum and Temporary Protection, asylum-seekers can register an intention to apply for asylum at the border entry points, in which case the asylum-seeker is provided with a travel permit valid for 72 hours, for the purpose of travelling to a police station to formally register the asylum claim. If already inside the country, the asylum-seeker must register his or her asylum application at the nearest police station. After the initial registration, the police are responsible for referring the asylum-seeker to the Sector for Asylum.³⁹

When a person intends to seek asylum in the Republic of Macedonia they must apply when entering the territory of the country at the border crossing point (airports included) or at the nearest police station. After stating their will to request asylum, the person will be escorted by a police officer to the Section for Asylum (SfA) or to the Reception Centre for Asylum Seekers. When a person residing in the country intends to submit an asylum application, they can do this in the Section for Asylum (SfA) at the Mol. In cases of family reunification, an asylum application can be submitted to the diplomatic/consular mission of the Republic of Macedonia.

Once the asylum seekers' application has been registered, a competent official from the Section for Asylum schedules an RSD (Refugee Status Determination) interview with the asylum seeker through their legal representative. The interview takes place at a remote office of the Section of Asylum located at the Reception Centre for asylum seekers, in circumstances that ensure appropriate confidentiality. The persons present are: the asylum seeker, their legal representative, the official and an interpreter for a language that the asylum seeker is capable of communicating in and which they are reasonably presumed to understand. Members of the family of the asylum seeker are not present at the interview, unless the official considers it relevant for the appropriate examination of the interviewed asylum seekers application.⁴⁰

Upon receiving a negative decision by SfA, an applicant has the right to legal remedy and an administrative dispute can be initiated to the Administrative Court.

If the verdict of the Administrative Court is negative, and this dissatisfies the asylum seeker, they have the right to an appeal to the High Administrative Court. The High Administrative Court is a newly established court, which officially started operating on 30 June 2011, in line with the Law on Administrative Disputes. The third instance legal remedy was previously under the jurisdiction of the Supreme Court.

Rights and obligations of asylum seekers

According to LATP, the asylum seekers until adoption of a final decision in the procedure for recognition of the right to asylum have the right to:

- » residence;
- » free legal aid;
- » accommodation and care in a Reception Center or other place of accommodation assigned by the Ministry of Labour and Social Policy, if he/she declares a need thereof;
- » basic health-care services in accordance with the regulations on health insurance;
- » social security in accordance with the regulations on health insurance;
- » right to education in accordance with the regulations on primary and secondary education;

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ The Belgrade Centre for Human Rights, *An NGO Perspective on the State of Asylum in the Region of Southeastern Europe*, Dosije studio, Belgrade, 2014.

- » work only within the Reception Center or another place of accommodation assigned by the Ministry of Labour and Social Policy, as well as the right to free access to the labour market for asylum seeker to whom the request for recognition of the right to asylum is not decided upon within a period of one year, after the expiration of one year;
- » communication with the High Commissioner for Refugees, as well as with non-governmental humanitarian organizations for the purpose of providing legal assistance in the course of the procedure for recognition of the right to asylum.

The LATP also provides that the asylum seekers are obliged to:

- » stay in the Reception Center or another place of accommodation assigned by the Ministry of Labour and Social Policy and not to leave the place of stay determined by the competent body without informing it or without having an approval for leaving the place, if it is so required;
- » co-operate with the asylum bodies, in particular to give his/her personal data, to hand over the identity and other documents which he/she may possess, to allow his/her photographing and dactyloscopying, personal search as well as the search of his/her luggage and the vehicle by which he/she has arrived in the Republic of Macedonia, as well as to give data about his/her property and income;
- » subject him/herself to medical examinations, treatment and omitted immunization upon request of the bodies competent for the activities in the field of the healthcare, in case of a threat to the public health; and
- » to respect the house rules of the Reception Center or the other place of accommodation assigned by the Ministry of Labour and Social Policy and not to behave violently.

Reception conditions

All asylum seekers have access to accommodation and basic support provided by the Ministry of Labour and Social Policy (MLSP) to cover their basic needs during their stay at the Reception Centre for asylum seekers while they await the final decision on their case.

There is only one Reception Centre for Asylum Seekers in the country and it is located in Vizbegovo which is around 3km distant from the centre of Skopje. The centre has the capacity for 150 people. It offers separate accommodation units for single male or female asylum seekers and families. Also, access to services is available only through the Reception Centre for asylum seekers. Persons may reside outside the Centre, however, at their own expense. Also, the asylum seekers have right to work within the Reception Centre for asylum seekers as well right of free access to the labour market after the expire of one year period from the day of submission of their asylum application.

In 2016 a new facility for accommodation was introduced, which accommodates vulnerable categories of asylum seekers. It is located in Skopje and has a capacity to accommodate 10-15 persons.



Prof. dr. Nevena Vučković Šahović

TREATMENT OF UNACCOMPANIED CHILDREN OUTSIDE OF THE COUNTRY OF THEIR ORIGIN

UNACCOMPANIED CHILDREN AND BASIC STATES' OBLIGATIONS

According to the Office of the United Nations High Commissioner for Refugees (UNHCR), approximately half of the world's refugees are children. These children are disproportionately likely to be victims of, *inter alia*, sexual exploitation and abuse, military recruitment, child labour and detention. They live at risk, stripped of land, jobs and family support. Furthermore, they are often denied access to food, shelter, housing, health services and education. For these reasons more and more refugee children need special protection and assistance, which is why they are protected under Article 22 of the Convention on the Rights of the Child (CRC).^{41 (i)} After the adoption of the CRC and under its influence, with the intention to develop a more progressive document and to promote strategies for the protection of refugee children, the UNHCR adopted numerous policy documents and strategies.

Internally displaced and migrant children are not formally named in Article 22 of the CRC, but their rights are acknowledged in the CRC Committee's General Comment number 6: *Treatment of Unaccompanied or Separated Children Outside of their Country of Origin*. In this General Comment, it was reaffirmed that **all rights of the Convention must be taken into account for all children**, meaning that migrant children, accompanied or separated by/from their parents, enjoy all rights enshrined in the Convention.

There are some specific rights enshrined in Article 22 and Article 10⁽ⁱⁱ⁾, for example the right to family reunification and to be dealt with in a positive, humane and expeditious manner, which directly concern migrant children. Moreover, there are a number of substantive rights which are regularly invoked in cases involving migrant children, specifically Articles 19⁽ⁱⁱⁱ⁾, 24^(iv), 28^(v), 31^(vi), 32^(vii), 34^(viii) and 36^(ix). The general principles of the Convention must always be taken into account for all children on the move.

A unaccompanied child outside of the country of his/her origin is to be treated irrespective of its refugee, migrant or other status and all rights of the child must be respected, as per obligations undertaken by ratification of the CRC.

The CRC:

- ***Obliges the States***
- ***Is directly applicable***
- ***Has a broad scope of rights***
- ***Adopts the philosophy of a holistic approach to child rights***
- ***Is the best tool for advocacy and a must do for all activists in the field***

⁴¹ Please note that explanations of footnotes marked with roman numbers can be found on pages 49-52.

INTERNATIONAL STANDARDS WE CAN USE AS A TOOL

International standards, be it conventions or documents, such as UN declarations, General comments of the Treaty Bodies and standards adopted under the auspices of European organizations, including the jurisprudence of the European Court of Human Rights are a must do for any activist or organization that deals with unaccompanied children. Instead of describing in detail, it is advisable to read them carefully and make direct reference to them.

When dealing with unaccompanied children, please use (but do not limit yourself to) the following documents:

Universal documents:

- » Universal Declaration of Human Rights, 1948;
- » International Humanitarian Law (Geneva Conventions 1949 and the 2 Additional Protocols 1977);
- » Convention Relating to the Status of Refugees, 1951;
- » Protocol relating to the Status of Refugees, 1967;
- » International Covenant on Civil and Political Rights, 1966;
- » International Covenant on Economic, Social and Cultural Rights, 1966;
- » Convention on the Elimination of All Forms of Discrimination against Women, 1980;
- » Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
- » Convention on the Rights of the Child, 1989;
- » Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000;
- » Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000;
- » International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990;
- » Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) and the Recommendations of the ILO No. 190;
- » The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children;
- » UN General Assembly, New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1;
- » Committee on the Rights of the Child, General Comments:
 - General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2006/6;
 - General Comment No. 12: The right of the child to be interviewed, 20 July 2009, CRC/C/GC/12;
 - General Comment No. 13 (1999);
 - General Comment No. 14: The right of the child for his or her interests to be of utmost importance, 29 May 2013, CRC/C/GC/14;
 - General Comment No. 15: Right of the child to enjoy the highest possible standard of health care, 17 April 2013, CRC/C/GC/15;
 - General Comment No. 20 (2016): Protection and Promotion of the Rights of Adolescents, 6 December 2016, CRC/C/GC/20;
- » The Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The Office of the UN High Commissioner for Human Rights, Genève, 2004;
- » Guidelines on Protection and Care UNHCR, 1994;
- » Inter-Agency Guiding Principles on Unaccompanied and Separated Children, 2004;
- » Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UN High Commissioner for Refugees (UNHCR), 1997;
- » Guidelines for the Alternative Care of Children: endorsed by the UN GA resolution 2010, A/ RES/64/142;
- » UNHCR Guidelines for the determination of the best interests of the child, 2008;

Council of Europe:

- » European Convention on Human Rights and Fundamental Freedoms;
- » European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- » Convention on The Protection of Children from Sexual Exploitation and Sexual Abuse;
- » Revised European Social Charter.

DEFINITIONS

It is always important to bear in mind the exact definition of unaccompanied or separated child, since every word of a definition enables us to recall international law and standards. In this case, generally accepted definitions are:

“Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

(CRC Committee: GC 6, paragraph 7)

“Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

(CRC Committee: GC 6, paragraph 8)

TREATMENT

When considering the rights of refugee children, reference to the Convention’s General Principles is always recommended. The principle of non-discrimination,^(x) including all of its facets, prohibits any discrimination on the basis of the child’s status. The principle of the best interests of the child^(xi) requires that a clear and comprehensive assessment be undertaken of all unaccompanied children in order to find the best solution for each child. The right to life, survival and development^(xii) includes protection from violence and exploitation. This article is particularly crucial, as unaccompanied children are vulnerable to various risks that could affect their life, survival and development, such as involvement in criminal activities and the risk of being trafficked. It is crucial for unaccompanied children to be provided with all the relevant information related to their status, and in that regard, to have their views taken into account in decisions that will affect their lives.^(xiii)

All individuals, including children, who have been granted status are protected by the *non-refoulement* principle of international law which strictly forbids the forcible return of any individual to her or his country of origin or transit where she or he may face persecution, or their transfer to another country that might force such a return.⁴²

Basic Principles:

- ***Legal obligations***
- ***Prohibition of discrimination***
- ***Best interests of the child as basis for determination of the short term and long term solutions***
- ***Right to life, survival and development***
- ***Non refoulement principle***
- ***Confidentiality***

⁴² See also GC 6, Paras 27, 74.

General and specific protection needs

Under international law and international human rights law, migrant children, in particular those unaccompanied by a family member are entitled to receive appropriate protection. Under the CRC, States parties are obligated to establish a functioning system and, in particular, to enact legislation addressing the treatment of unaccompanied children.⁴³

States parties must not only consider the application of international law and standards to cases involving unaccompanied children, but must also bear in mind that they are *entitled to the fullest extent to the enjoyment of all human rights granted to children in the territory of subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.*⁴⁴

According to the Committee on the Rights of the Child, status determination interviews and hearings must be conducted in a child-friendly manner and provide access to an appeal.⁴⁵ A guardian or advisor should be appointed, as well as lawyers and interpreters where needed, to ensure that all decisions made are in the best interest of the child.

The enjoyment of the rights stipulated in the Convention is, if not otherwise explicitly stated, available to all children. However, because they have vast and sometimes complex needs, unaccompanied children are entitled to special protection measures and assistance. There are some articles which must be read in direct conjunction with Article 22 of the CRC: Articles 7^(xiv) and 8^(v): the right to nationality and family relations, Article 9^(xvi): separation from parents only when necessary in the best interests of the child, Article 10^(xvii): The right to family reunification and to be dealt with in a positive, humane and expeditious manner, Article 20^(xviii): Children without families, Article 3 and 5^(xix): Trafficking of children, Article 37^(xx): Deprivation of liberty as a measure of last resort and Article 39^(xxi): Recovery and rehabilitation after experiences of armed conflict, torture and other forms of abuse.

Special protection of the rights of unaccompanied children is further interpreted in the Guidelines for the Alternative Care of Children, a document endorsed by a UNGA Resolution.

General and specific protection needs and obligations of the States

- *Initial assessment and measures*
- *Appointment of a guardian or adviser and legal representative*
- *Care and accommodation arrangements*
- *Full access to education*
- *Right to an adequate standard of living*
- *Right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health*
- *Prevention of trafficking and sexual and other forms of exploitation, abuse and violence*
- *Prevention of military recruitment and protection against effects of war*
- *Prevention of deprivation of liberty and treatment in cases thereof*

Access to asylum procedure, legal safeguards and rights in asylum

Unaccompanied children are entitled to access asylum procedures and the States must enable such procedures in a child-sensitive manner, implementing all procedural measures and safeguards.

Access to asylum procedure, legal safeguards and rights in asylum:

- *Access to asylum procedures, regardless of age*
- *Procedural safeguards and support measures*
- *Child-sensitive assessment of protection needs, taking into account persecution of a child-specific nature*
- *Full enjoyment of all international refugee and human rights by children granted refugee status*
- *Children to benefit from complementary forms of protection*

43 GC 6, Para 64.

44 GC 6, Para 76.

45 See also GC 6.

Family reunification, return and other forms of durable solutions

Since the family is the fundamental group of societies and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or to return to the care of parents or close family members. Where the child's own family is unable to care for the child, it is the role of the State to provide supervision of safety, well-being and development of any unaccompanied child. Such care and decision-making process should always be based on case-by-case assessment, with regards to the General Principles listed above. Prevention of family separation is an obligation of every State as is promotion of family reintegration. Family tracing is one of the priorities on every State's list of obligations towards an unaccompanied child.

While working on family reintegration, or alternative measures for provision of a family environment for the child, the State must provide alternative care, with a view of durable solutions, no matter whether they will last for a short, long or indefinite period.

Family reunification, return and other forms of durable solutions

- **Family reunification**
- **Return to the country of origin**
- **Local integration (education, health, cultural life, recreation and other)**
- **Inter-country adoption**
- **Resettlement in a third country**

Trainings, data and statistics and international cooperation

All of the measures that the States must undertake in order to implement rights of unaccompanied children are not possible without actual insight into the situation in the country and in the region. Therefore, the States must establish a child-friendly data collection system, analysis and research. It is also important that all of the stake holders in the country where unaccompanied children are found (the State, NGOs, National Human Rights Institutions and others) are aware and trained about the standards that children are entitled to; familiar with the political and cultural specificities of the countries children come from and on the risks and possible violence children have been exposed to. In order to meet the goals of a successful response to treatment of unaccompanied children who are outside of the country of their origin, the States must act responsibly, without delays, making sure that children are safe, rehabilitated and integrated in their societies, even if it is for a short period.

International cooperation is one of the prerequisites for successful treatment of unaccompanied children. Harmonized procedures, responses, tracings and all other necessary activities are possible in a framework of cooperation among States and all stakeholders.

Training Data and Statistics:

- **Training of personnel dealing with unaccompanied and separated children**
- **Data and statistics on separated and unaccompanied children**
- **Well planned, experience-based and efficient international cooperation**



(ENDNOTES)

(I) Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

(II) Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

(III) Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

(IV) Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

(V) Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

(VI) Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

(VII) **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

(VIII) **Article 34**

- States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
 - (b) The exploitative use of children in prostitution or other unlawful sexual practices;
 - (c) The exploitative use of children in pornographic performances and materials.

(IX) **Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

(X) **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

(XI) **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

(XII) **Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

(XIII) **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

(XIV) **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless

(XV) **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

(XVI) **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

(XVII) Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

(XVIII) Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

(XIX) Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

(XX) Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

(XXI) Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.



Bojana Balević
SGBV expert

PREVENTION AND PROTECTION AGAINST SGB VIOLENCE DURING MIGRATIONS

DEFINITION OF GENDER-BASED VIOLENCE

Gender-based violence (GBV) is a life-threatening concern relevant from the point of view of health, protection and human rights that can have a devastating impact on women and children in particular, as well as families and communities.

Gender-based violence is violence based on *gender relations, roles, norms, expectations, limitations* etc. It involves the abuse of *power* and includes some type of *force*, including *threats* and *coercion*, and results in *harm*. GBV is characterized by the lack of *informed consent* and *violates a number of universal human rights* protected by international instruments and convention.

Around the world, GBV has a greater impact on women and girls than on men and boys. The term - gender-based violence is often used interchangeably with the term - violence against women. The term - gender-based violence highlights the gender dimension of these types of acts; in other words, the relationship between females' subordinate status in society and their increased vulnerability to violence. It is important to note, however, that men and boys may also be victims of gender-based violence, especially sexual violence.

Council of Europe Convention on preventing and combating violence against women and domestic violence:

- » **violence against women** is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- » **domestic violence** shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;
- » **gender** shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men;
- » **gender-based violence against women** shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- » **victim** shall mean any natural person who is subject to the conduct specified in points a and b;

GBV IN HUMANITARIAN EMERGENCIES

Humanitarian emergencies are a complex mix of occurrences that may be the result of natural forces (extreme weather or geological activity) or human activity (conflict, social upheaval and environmental degradation). During emergencies, women and adolescents especially can be separated from their families and communities, increasing their vulnerability to attack. Breakdowns in law and order and in protective societal norms also contribute to this abuse.

All humanitarian actors should be familiar with these universal facts about GBV:

- » GBV is underreported in any context;
- » All humanitarian actors ought to assume that GBV is occurring and threatening the affected population (*there is no need to wait for statistics to take action*);
- » Most societies blame and stigmatize the survivors and often their children and families;
- » Many actors and helpers who may come into contact with a GBV survivor do not know what to do and how to refer them to services and are uncomfortable with the issue of GBV.

Effectively addressing gender-based violence in emergencies requires actors to:

- » Promote and protect the rights of affected populations (especially women and girls);
- » Intervene when those rights are violated;
- » Provide services and assistance to both meet the needs and realize the rights of those who have experienced violence.

FRAMEWORK FOR ADDRESSING GBV IN HUMANITARIAN EMERGENCIES

Three key approaches are relevant during emergencies:

- » Rights-based approach;
- » Community based approach;
- » Survivor-centered approach;

These three approaches complement each other and are not exclusive. They represent three different focuses on the same issue.

Rights-based Approach

A rights-based approach recognizes women and girls' rights as human rights and obliges all stakeholders to:

- » Keep rights of women and girls in emergencies on the international agenda (including their right to live free from GBV).
- » Promote, protect and fulfil the rights of women and girls.

A rights-based approach seeks to analyse and address the root causes of discrimination and inequality; to ensure that everyone regardless of their gender, age, ethnicity or religion has right to live with freedom and dignity, free from violence, exploitation and abuse, in accordance with principals of human rights law. The approach is based on standards of international human rights and humanitarian law.

Document	Key Excerpts Related to GBV
Universal Declaration of Human Rights (UDHR, 1948)	<p>Article 2 - prohibits discrimination based on sex.</p> <p>Article 4 - "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."</p> <p>Article 5 - "No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment."</p> <p>Article 16(b) - "Marriage shall be entered into only with the free and full consent of the intending spouses."</p> <p>Article 26(1) - "Everyone has the right to an education."</p>
International Covenant on Civil and Political Rights (ICCPR, 1976)	<p>Article 2 - prohibits discrimination based on sex.</p> <p>Article 6 - "Every human being has the inherent right to life."</p> <p>Article 7 - "No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment."</p> <p>Article 8 - (1) "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited"; (2) "No one shall be held in servitude"; (3)(a) "a) No one shall be required to perform forced or compulsory labour."</p> <p>Article 9 - "Everyone has the right to liberty and security of person."</p> <p>Article 23(3) - "No marriage shall be entered into without the free and full consent of the intending spouses."</p>

<p>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1981)</p>	<p>Article 2 - "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] (c) To establish legal protection of the rights of women on an equal basis with men..."</p> <p>Article 5(a) - "States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women."</p> <p>Article 6 - "States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."</p> <p>Article 10 - "States parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education..."</p> <p>Article 16(1)(b) - [Men and women have] "the same right freely to choose a spouse and to enter into marriage only with their free and full consent"</p> <p>Article 16(2) - "The betrothal and the marriage of a child shall have no legal effect."</p>
<p>CEDAW General Recommendation 12 –Violence against Women (1989)</p>	<p>"...articles 2, 5, 11, 12 and 16 of the Convention require the States Parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life."</p>
<p>CEDAW General Recommendation 19 –Violence against Women (1992)</p>	<p>"Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (para. 1).</p> <p>"The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty" (para. 6).</p> <p>"Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence" (para. 6).</p> <p>"States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation" (para. 9).</p> <p>"Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures" (para. 13).</p>
<p>Convention on the Rights of the Child (CRC, 1990)</p>	<p>Article 9 - "States Parties shall ensure that a child shall not be separated from his or her parents against their will."</p> <p>Article 12(1) - "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."</p> <p>Article 19 - "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parent(s), legal guardian(s) or any other person who has care of the child."</p> <p>Article 24(3) - "State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."</p> <p>Article 34 - "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse."</p> <p>Article 35 - "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."</p> <p>Article 37 - "States Parties shall ensure that: (a) "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."</p> <p>Article 39 - "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts."</p>
<p>Geneva Conventions (1949)</p>	<p>"Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault" (Fourth Geneva Convention, Article 27).</p> <p>Common Article 3 prohibits:</p> <p>"mutilation, cruel treatment and torture"</p> <p>"outrages upon personal dignity, in particular humiliating and degrading treatment"</p> <p>Additional Protocol 1 calls for special protection of women in conflict (Article 76).</p>
<p>Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT, 1987)</p>	<p>Article 1 - "The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for...any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity..."</p>

In promoting and protecting rights of GBV survivors, we can also use Council of Europe treaties such as: the European Convention on Human Rights and Fundamental Freedoms, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Convention on The Protection of Children from Sexual Exploitation and **Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).**

The Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) recognizes migrant women, with or without documents, and women asylum-seekers as particularly vulnerable to gender-based violence. Moreover, the convention devotes an entire chapter to women migrants and asylum-seekers facing gender-based violence. It contains a number of obligations that aim at generating a gender-sensitive understanding of violence against migrant women and women asylum-seekers.

Community based approach

A community based approach seeks to empower especially the affected individuals, groups and communities by providing knowledge, resources and skills they need to affect change, and social and gender relations in their own community, to address GBV. In this manner, we ensure that the affected population is actively engaged as a partner in developing strategies related to the protection and provision of humanitarian assistance. Also, the community based approach involves direct consultation with women, girls and others in the group at risk at all stages in the humanitarian response – to identify protection risks and solution and build on existing community-based protection mechanisms.

Survivor-centred approach

A survivor-centered approach aims to create a supportive environment in which a survivor's rights are respected and in which s/he is treated with dignity and respect. The approach helps to promote a survivor's recovery and his/her ability to identify and express needs and wishes, as well as to reinforce his/her capacity to make decisions about possible interventions. The approach assumes that each survivor understands what is best for her/his own safety, healing and recovery.

To be treated with dignity and respect		Victim-blaming attitudes
To choose	Vs.	Feeling powerless
To privacy and confidentiality		Shame and stigma
To non-discrimination		Discrimination on the basis of gender, ethnicity, etc.
To information		Being told what to do
To safety		Being cast out

GUIDING PRINCIPLES FOR WORKING WITH INDIVIDUAL SURVIVORS/ VICTIMS

- » Ensure the safety of the survivor and her/his family at all times.
- » Respect the confidentiality of the affected person(s) and their families at all times.
- » All written information about survivors must be maintained in secure, locked files.
- » Respect the wishes, choices, rights, and dignity of the survivor.
- » Conduct interviews in private settings and with same sex translators, wherever possible.
- » Be respectful, maintain a non-judgmental manner. Do not laugh or show any disrespect for the individual or her culture, family, or situation.

CONTACT LIST OF INSTITUTIONS AND ORGANISATIONS WORKING WITH REFUGEES AND MIGRANTS



Serbia

Krunska 58
11 000 Belgrade
Tel: +381 11 3082 100

srbbe@unhcr.org
www.unhcr.org

FYR Macedonia

Uroš Džudovikj 2A
1000 Skopje
Tel: +389 2 311 8641

<http://www.unhcr.org/the-former-yugoslav-republic-of-macedonia.html>

NATIONAL HUMAN RIGHTS INSTITUTIONS

Serbia

Deligradska 16
11 000 Belgrade
Tel: +381 11 2068 100

zastitnik@zastitnik.rs
www.ombudsman.org.rs

Complaints forms
www.ombudsman.org.rs/index.php?option=com_content&view=article&id=51&Itemid=10

FYR Macedonia

Makedonija No.19 (building of TD „Makosped“)
1000 Skopje
Tel: +389 2 3129 335

contact@ombudsman.mk
www.ombudsman.mk/en

Complaints forms
www.ombudsman.mk/EN/submit_a_complain.aspx

INSTITUTIONS IN CHARGE OF REFUGEES/MIGRANTS

Serbia

Commissariat for Refugees and Migrations
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kirs@kirs.gov.rs
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FYR Macedonia

Ministry of labor and social policy
Sector for migration, integration of refugees,
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mtsp@mtsp.gov.mk
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TRANSIT, ASYLUM AND RECEPTION CENTERS IN SERBIA

Name	Type	Address	Town	Manager	Contact	Email	Phone
Adaševci	TC	Autout E-70	Adaševci	KIRS	Dragan Velimirović	Pc.adasevci@gmail.com	+381 64 8281 627
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Bogovađa	AC	Bogovađa bb	Bogovađa	KIRS	Ivan Radojević	cabogovadja@hotmail.com	+38114438035
Bosilegrad	RC	Blat bb	Bosilegrad	KIRS	Marija Kereks Ristić	pcbosilegrad@gmail.com	+381 64 8283141
Bujanovac	RC	Industrijska zona bb	Bujanovac	MOL/KIRS	Nemanja Kubrilo	bujanovac@gmail.com	+381 64 8283145
Dimitrovgrad	RC	Sofijski put bb	Dimitrovgrad	KIRS	Joca Kačar	pcdimitrovgrad@gmail.com	N/A
Divljana	RC	Divljana bb	Bela Palanka	KIRS	Jelena Stanković	pcdivljana@gmail.com	N/A
Kikinda	TC	Topolski put bb	Kikinda	KIRS	Dajena Ristić	Centar.kikinda@kirs.gov.rs	+381 64 8283177
Krnjača	AC	Pančevacki put bb	Beograd	KIRS	Đurđa Surilan	cakrnjaca@hotmail.com	+381 648283126
Obrenovac	TC	Nemanjina bb	Obrenovac	KIRS	Sava Rakić	pcobrenovac@gmail.com	+ 381 64 8283159
Pirot	RC	Beriovački put	Pirot	KIRS	Joca Kačar	Pcpirot@gmail.com	+381 64 8283153
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Principovac	RC	Principovac bb	Sot	KIRS	Nada Gertner	N/A	N/A
Sjenica (Berlin)	AC	Jablanička bb	Sjenica	KIRS	Fikret Hamidović	casjenica@gmail.com	+381 62 205113
Sjenica (Vesna)	AC	Jablanička bb	Sjenica	KIRS	Fikret Hamidović	casjenica@gmail.com	+381 62 205113
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Subotica	TC	Tuk Ugarnice 53	Subotica	KIRS	Sinisa Marković	Pcsubotica1@gmail.com	+381 24 4150031
Tutin	AC	Vidrenjačka 1	Tutin	KIRS	Sead Rec	tutinazilcentar@gmail.com	+381 20 5724304
Vranje	RC	Radnička 2	Vranje	KIRS	Lazar Pejčić	N/A	+381 64 8283173

TC = Transit Center

AC = Asylum Center

RC = Reception Center

MOL = Ministry of Labour and Social Welfare

KIRS = Commissariat for Refugees and Migrations.

TRANSIT, ASYLUM AND RECEPTION CENTERS IN FYR MACEDONIA

Name	Type	Address	Town	Manager	Contact	Email	Phone
Transit Center Tabanovce	TC	N/A	Kumanovo	CCM	Goran Stojanovski	rcukkumanovo@cuk.gov.mk	+389 31 414 390
Transit Center Vinojug	TC	N/A	Gevgelija	CCM	Zoran Lazarevski	rcukgevgelija@cuk.gov.mk	+389 34 212 900
Reception Center for asylum seekers- Vizbegovo	RC	Vizbegovo 1	Vizbegovo, Skopje	Ministry for Labor and Social Policy	N/A	N/A	+389 2 260 0221
Reception Center for foreigners- Gazi Baba	RC	Mendeleeva b.b.	Gazi Baba, Skopje	Ministry for Labor and Social Policy	N/A	N/A	+389 2 314 2613

TC = Transit Center

AC = Asylum Center

RC = Reception Center

MOL = Ministry of Labour and Social Welfare

KIRS = Commissariat for Refugees and Migrations.





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 helpontheroute@divac.com

 www.divac.com/helpontheroute

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