



Home Office

# Country Information Note

## Rwanda: Annex 3 (other material)

Version 3.0

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# Annex 3

Section updated: 28 April 2024

## About the country information

- 1.1.1 This annex contains
- Interview notes from meetings between Home Office officials and various organisations and persons, which took place in Rwanda in January and March 2022.
  - Institute of Legal Practice and Development (ILPD) and Ministry of Justice, Refugee law and refugee status determination process training manual
  - Agreement on provision of legal aid for asylum seekers between the Ministry of Justice (MINIJUST) and the Rwanda Bar Association (RBA)
- 1.1.2 The inclusion of a source is not necessarily an endorsement of it or any view(s) expressed.
- 1.1.3 Annex 3 forms part of the evidence base to assist caseworkers when making decisions about whether it is safe to relocate an individual from the UK to the Republic of Rwanda.
- 1.1.4 This Annex must be read together with other Country Policy and Information Team (CPIT) products:
- [Country Information Note – Rwanda: Asylum system](#)
  - [Country Information Note – Rwanda: Human rights](#)
  - [Country Information Note – Rwanda: Medical and healthcare](#)
  - [Country Information Note – Rwanda: Annex 1 Government of Rwanda \(GoR\) evidence](#)
  - [Country Information Note – Annex 2 UNHCR evidence](#)
- 1.1.5 This Annex must also be read together with other Home Office guidance:
- [Safety of Rwanda](#)
  - [Inadmissibility: safe third country cases](#)
  - [Considering Human Rights Claims](#)
  - [Medical claims under Articles 3 and 8 of the European Convention on Human Rights \(ECHR\)](#)
- 1.1.6 This Annex must be read together with other related information:
- [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants \(the treaty\)](#)
  - [Safety of Rwanda \(Asylum and Immigration\) Act 2024](#)

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## **A1. Visit to Kinigi Integrated Development Program (IDP) Model Village (Musanze), 20 January 2022**

**Present: Mayor of Musanze, 2 Senior MINEMA officials, Senior DGIE official, Headteacher of Model Village school, 4 HO officials**

### **Presentation and tour of the complex by Mayor:**

The Rwandan government's IDP is designed to promote affordable housing, decent settlement and self-reliance. Construction of the Model Village (MV) started in November 2020. The inauguration of the MV was on 4<sup>th</sup> July 2021 (to coincide with Liberation Day which is a day of celebration). Construction of the MV took place in association with the Rwandan Defence Force (RDF).

### **Components of MV:**

1. Apartments – housing 144 families (680 people) moved from informal settlements.
2. Schools – nursery, primary, secondary
3. Kinigi Health Centre (the old original Health Centre has been renovated and expanded by the addition of new buildings)
4. Art Craft Centre, providing carpentry and welding services to promote job creation. Occupants of the MV are able to develop their skills and it helps them in income generation.
5. Livestock – cows, sheep, chickens, other small livestock
6. A new road was built to connect Kinigi to the MV complex

### **Apartments:**

4 blocks of 24 3-bed apartments, 90sqm, 96 households

2 blocks of 24 2-bed apartments, 65sqm, 48 households

Apartments are fully occupied. Each apartment also has a living area, kitchen, bathroom. All equipment in the house is provided for the occupant e.g. furniture.

**Q** If someone wanted to leave the project, for example, a student going to university, and moved out of their apartment, would they be replaced?

**A** [Mayor] most students would be living with their family so the family would remain in the property.

**Q** Do residents pay rent?

**A** [Mayor] 100% gift to occupant. It is their property, they own them. They are provided with papers. They are advised not to sell so they don't become a burden on the government.

**Q** Why were the residents relocated?

**A** [Mayor] It is Rwandan government policy to move from informal settlement to formal settlement.

**Q** Do they bring their belongings with them?

**A** [Mayor] Residents sell previous belongings. Apartments come fully furnished.

Photograph of the outside of apartment blocks:



### **Visit to apartment**

**Mayor:** TV and furniture inside. If families have more children we have provided a sofa that can be converted during the night [into a bed]. Bedroom for the kids, bedroom for visitors, bathroom and kitchen. They usually have means to afford gas use for cooking, but in case one happens to be in shortage of means, we have provided alternative [cooking facilities] outside with charcoal

**Q** Where do they wash clothes?

**A** [Mayor] There is a communal wash-room and clothes line outside

Photograph of outdoor alternative cooking area:



Bedrooms in 3-bedroom apartment:



One of 2 bathrooms in the 3-bedroom apartment:



Kitchen:



Living area (with sofa bed):





## **Kinigi Health Centre:**

Services include:

- Outpatient services (consultation, pharmacy, laboratory and admin)
- minor surgery, health, education, ophthalmology, maternity, HIV counselling

Ward capacity allows hospitalisation of 26 patients.

### **Visit to Health Centre**

**Mayor:** The buildings with red roofs are the old health centre with a lack of space. There are different [new] blocks, pharmacy, maternity, hospitalisation, consultation, administration, etc

**Q** How many doctors are on site?

**A [Mayor]** We have no permanent doctors we have only permanent nurses, but we have visiting doctors.

**Q** How many nurses are there?

**A [Nurse on site]** 10 nurses, we have 3 lab staff technicians and 1 dentist technician, 1 mental health officer, 2 social workers and 1 community health worker. Staff in total is 26, we have 16 officers for admin duties.

**Mayor:** there is a permanent Covid 19 testing site. Apart from specific services, the medical services are usually not free. We have community health insurance. Household pay insurance and when they come they pay a fee, 10% of total cost, 90% is covered by insurance.

**Senior MINEMA official:** everyone has CBHI, paying 10% of cost is not a big deal.

**Mayor:** All civil servants contribute 0.3% of salary to the scheme. For community [non civil servants] cost is 3000 RWF per head of family per year. Civil service contribution is added to community contribution to assist cost of payment. Contribution of 3000 RWF is managed by the Rwanda Social Security Board, the community pay through mobile money payment on phone, enter ID and make payment. Civil servants contribute to a different scheme.

Photographs of the health centre:



### **School:**

The original school was renovated, and new buildings added. Includes classrooms, admin block, dining area, 2 smart classroom, 2 laboratories, staff room, play area (basketball, football, volleyball and handball).

The ECD caters for around 200 children, has 6 classrooms, office, sleeping rooms, and a kitchen.

**Headteacher:** There are 186 children and each class has 30 to 35 children. The children come from the MV and other villages. The first class is 3-years old. Each age group has 2 rooms, total of 62 children for each level. Children are here from

7am to 5pm, breakfast and lunch is provided. Parents are at work.

Photograph of school:



### Support facilities:

1. Livestock sheds – 102 cows, 54 goats, 90 sheep. We've provided a space where relocated people can bring their livestock with them and maintain their original lifestyle.
2. Poultry farm – we've provided 8000 cages with 8000 hens (6500-7000 eggs per day). All 144 households are members of a cooperative who manage the poultry farm. Each household has rights/shares to income generated by the farm.
3. Agakiro is the Arts/Craft centre – 30 welders and 60 carpenters
4. Gardens for growing vegetables

### Visit to gardens and poultry farm:

**Mayor:** The gardens are shared by the whole community, vegetables are mainly consumed at home. Produce from the poultry farm is sold. There is a meeting room for the cooperative.

**Q** How far away was the original village?

**A [Mayor]** There were several villages but all in the same sector. Villages are not far, some 10 minutes, some 20 minutes away. They [the residents] farm and start to come back at 3pm.

**Q** Have there been any problems on the complex? Anything that doesn't work?

**A [Mayor]** Some of them had no utilities in their original place and are adjusting, for example, paying water bills might be beyond the capacity of some. We are hoping with this project to support them with their income, will help so they are not struggling.

**Q** When you designed the livestock facilities how much did you work with the community to see what they wanted?

**A [Mayor]** the project was conceived for them, there was no consultation.

Photograph of vegetable farming area:



Photograph of livestock farming area:



### **Visit to carpentry/welding site**

[pointed out some finished furniture waiting to be taken to market.]

**Q** Do you train them or are they already carpenters and welders?

**A [Mayor]** They are already carpenters and welders who work here but students come here for internships.

**Q** Does the Arts/culture centre provide skills other than carpentry and welding?

**A [Mayor]** No, we have started with two options. We have technical/vocational schools for learning. Carpentry and welding are used to build furniture for the housing and to market.

Photograph of the carpentry centre:



**Occupants of village are benefited by:**

1. Decent housing and settlement, improved living conditions
2. Easy access to health and education
3. Plots for agricultural activities
4. Income generation poultry project
5. Job creation
  - Expansion of school has meant new teachers have been recruited
  - Arts/craft centre employs welders and carpenters
  - Cleaners and security guards employed for apartments
6. 1500 to 2000 of the labour force during construction were enrolled in a saving and pension scheme
7. Access to infrastructure and utilities e.g. roads, water
8. Social cohesion among community

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## **A2. Isange One Stop Centre, meeting at the hospital, 19 January 2022**

Present - **Senior Official MINEMA, MINAFFET, Manager and Co-ordinator IOSC, 2 colleagues from IOSC, 4 representatives from the Home Office.**

Overview provided by **Manager and Co-ordinator IOSC**

Centre manages victims of Gender-based violence (GBV) and child abuse (CA) in general, not specifically asylum seekers or refugees. One stop centre model with a holistic approach.

Est 2009 in this hospital as a response to GBV. Multi-sectoral (ministries of justice, health and institutions such as Rwanda Investigation Bureau (RIB) and police) are involved. It is a multi-disciplinary approach providing a comprehensive service of different experts from different disciplines, such as doctors, psychologists, counsellors, investigators and legal support from MoJ under one roof – 24/7 and is free (to the victim, as is paid by the govt and partners).

Keeping services together in one place:

- Address the multiple needs of victims (risk of pregnancy/STD resulting from sexual violence, health, social needs)
- Provide comprehensive services
- Reduces risk of losing evidence – if the victim has to move around hospital to police etc
- Reduces re-victimisation. If moving and having to re-tell the story
- Reduces risk of victims giving up (if for example, they had to travel long distances between different service providers).
- Basic services under one roof

No single institution can effectively manage GBV and CA.

Services provided - Investigations, psychosocial, counselling, medical treatment, medical legal examination, temporary shelter.

Operational framework exists to move a victim through the process: reception (referral) – investigation (judicial support) – medical (examination/treatment) – psychosocial support – safe room (temp shelter) - counsellors.

44 IOSC in all 30 districts, all district hospitals, referral and specialised hospitals. Mobile van (1) with a investigators room, Dr's room etc.

Refugee camps tend to be close to the hospitals to access services. One Stops are not in refugee camps, but the mobile van can go there.

Victims of GBV and CA can be men/women, boys/girls.

Impact of single location – timely comprehensive support, reduction in re-victimisation, prevention of infection/unwanted pregnancies.

IOSC is for anyone who has experienced GBV and child abuse (male and female). Service covers both RWA nationals and non-nationals.

**Q – You provide services for men do they access the service and are you aware of how many are male refugees?**

**A-** 361 victims from Mahama camp (not just men), these do not reflect the actual

numbers.

**Q - What sort of things are required when they come? Are status docs or insurance needed to access services?**

**A -** In general we ask for ID and where the person is from, relationship and this is all done at the reception

**Q - If a person doesn't have any ID does it stop access?**

**A-** If they don't have ID, usually someone knows them. Treatment is first and verification of ID later. The one service that might be an issue is the termination of pregnancy, especially if a minor. But it is rare that no one has ID or we are not able to identify.

**Do you get referrals into the centre from other people/organisations?**

**A -** We get referrals from friends, community, schools, employers (anyone can refer). The entry point is free.

At exit the referral onward will depend on where they are based and the circumstances of their case. We use existing community structures to provide services (ie counselling).

We carry out home visits and follow-up phone calls to monitor progress of cases.

**What is the Dr/patient ratio?**

**A -** There is one ratio according to MoH. But the MoH doctor/patient ratio doesn't apply to Isange. We receive 10 to 12 victims per day. There is one permanent full time Dr and cover when they are not present. There is a Dr available 24/7.

**Q - Psycho social support – how many people access?**

**A-** Every person should receive psycho-social support but sometimes, for example, if one victim's session takes 2 to 3 hours, then we may not have enough counsellors. Some sessions can be hours long. The concept is to provide for every person that comes to the centre, but we are also able to do referrals to counsellors in the community.

**Q- What about victims who cannot speak Kinyarwanda/French/English language?**

**A-**We can struggle with unofficial languages or sign languages.

**Q- Do you offer training on awareness of the impact of SGBV?**

**A -** Awareness campaigns are run in the community and we are working with different partners about how to access services and the services victims can get. We have phone lines. We are working with different partners to achieve this. Different awareness programs are run by different ministries.

In terms of staff training, we have a programme that runs every year, to maintain standards. We have a training manual.

**Q - Partner organisations – do you partner with WHO or Red Cross or UNHCR?**

**A -** We work with UNHCR on training awareness campaigns and psycho-social services.

**Q- You provide temporary shelter but what happens if a woman doesn't want**

### **to go home ever?**

**A-**We have not experienced that circumstance. We have a safe space at the centre which is based on immediate security. We have safe houses that can be used for long term accommodation, until the woman starts to be self-reliant.

The longest we have had someone stay in a safe house is 3 months. We had a victim of child abuse who came and she stayed in the safe room before she was relocated with her parents to another district. She would have been victimised in the community by the perpetrators.

A person can stay in a safe house for as long as they still have the problem. Once there is not a problem it becomes the problem of the state to care for that person.

[Tour of facility] We have a children's counselling room, medical-legal examination room, children's interview room, adult counselling room. Samples are taken on site.

Isange safe room:



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### **A3. Meeting with Alight, 23 March 2022**

#### **Do Alight play any role in the RSD Process in Rwanda?**

No. Alight don't play role in RSD process. Only come across people once processed (by IOM or UNHCR)

#### **What support is available to urban refugees who experience SGBV?**

Alight focus on prevention against SGBV case management at the camps. Alight is responsible for providing protection/SGBV services only. Other UNHCR implementing partners provide additional support services including shelter, WASH, Education, Food etc.

Alight support to POCs in Rwanda with provision of services under Health, Nutrition, SGBV prevention and case management, community empowerment and Child Protection in ETM Gashora. For SGBV case management, our referral pathways include safe spaces (both under Alight and also government administered). Alight also tries to run awareness campaigns to advise POCs on how to prevent SGBV and where to find help when they become victims of domestic violence. Police and Alight medical staff have been trained on how to spot victims of SGBV and how to refer to Alight for assistance.

Alight does provide support to urban based asylum seekers – targeting them with awareness campaigns. Not aware of which organisations are also support urban based asylum seekers. Alight is specifically assigned to provide protection services - other organisations provide support in other areas (medical, food, shelter etc). Asked to ensure protection matters.

Alight SGBV programming is composed of 2 components – awareness (create awareness of rights at household level and different kinds of gender-based violence e.g., sexual, psychosocial, physical, child neglect etc). Alight has a hotline, if you call, someone will revert back to caller immediate and the person will receive services within 24 hours.

Asylum seekers newly arrived into the country are aware of ALIGHT protection services as they pass through transit camps that are inside country borders. Alight usually receives referrals from different stakeholders including those from UNHCR and IOM, who have mandated Alight to oversee issues for target POCs.

Alight uses such occasions as commemoration of international days such International Women's day, day of the child, to convey messages of SGBV prevention.

The police are one of Alight's partners in prevention of SGBV. The police have been trained and are aware of how to manage people who have been sexually abused, including referral of victims to ALIGHT and particularly those who have suffered sexual abuse at the camps and they don't know where to seek assistance.

Alight also receive referrals from health / medical centres at the camp level.

Alight uses existing referral path ways facilitate affected POCs to access to justice, healthcare, housing by refereeing them to appropriate service provider– such services also includes 'safe spaces' for people who prefer not to go home based on survivor centred approach. Refugee Camps also have 'safe spaces', as do urban areas - run by the Ministry of Gender and Family Promotion (MIGEPROF).

There is no discrimination in who can receive support – asylum seekers, refugees and Nationals receive the same support.

### **Is SGBV a particular problem facing refugees/ asylum seekers in Rwanda?**

SGBV happens daily but it's not always being reported, for people to get support.

Yes, it's a concern. Culture of silence in Rwanda, SGBV and child neglect occurs at household level.

Alight thinks SGBV is a particular problem for refugees given their vulnerability. There is a Culture of silence in this country which Alight is trying to address through SASA community mobilisation approach<sup>1</sup> – SGBV happening daily at household level but extent to which this is reported is low. Alight adopting integrated approach that is anchored on community-based structure and SASA (Community Activists – live and work in community, responsible for awareness, identifying cases, helping to guide where to seek support they require). GBV is remains problem in RWA – here need extra resources like advocacy and funding - during COVID-19 movement restrictions, only 2 services were permitted to operate (Water/Sanitation & Health Services) – Protection services were not allowed to operate because they are not recognised as a lifesaving activity. Also need resources for sensitisation.

ALIGHT has been advocating to GOR to allow SGBV to be classified as 'life saving' service. This would then allow for continuation of provision of SGBV services even in wake of covid-19 movement restrictions.

We also need resources to increase awareness and sensitisation.

How do we break culture of silence? Needs to start from household level, may establishing gender-based clubs at school to raise awareness as kids are good influencers and communicators and would be agents to change at household level/ parents.

Alight works with survivors across RWA nationals, refugees and asylum seekers. In line with Comprehensive Refugee Response Fund CRRF of Rwanda, which requires humanitarian organisation to target 70% refugees & 30% host community. Donors allow Alight flexibility to target refugees in camps and surrounding communities

### **Re SGBV, is there a difference in risk presented to urban vs camp-based refugees?**

Alight hasn't done research on this question, most of our focus is on camp-based programming and what we are that there is an estimate of 400-500 cases recorded on annual basis the camp level), Other than refugee camps Alight is less present elsewhere and hence don't have statistics [for incidents of SGBV among urban refugees].

### **How are cases referred?**

Survivors of SGBV can self-refer, or cases can be referred to ALIGHT from UNHCR or other UNHCR partner orgs or our GBV prevention community activists (CAs).

Big challenges due to covid movement restriction situation. As mitigation measure against the spread of covid-19, MINEMA temporarily stopped Protection services for Refugees and asylum seekers except WASH and Health services.

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<sup>1</sup> <https://raisingvoices.org/women/the-sasa-approach/>

Alight has Protection services at transit centres located and crossing points at border in . When asylum seekers arrive they will come in contact with IOM or UNHCR who will avail information about services provided by partners including Alight.

Other platforms that Alight uses to create SGBV prevention awareness include community radios, drama groups and platforms like celebration of international days (e.g., IWD).

Police are one of referral pathways for survivors who wish to pursue legal action against SGBV perpetrators. Alight trains service providers on how to handle SGBV in terms of protection, confidentiality and sensitivity.

Health Medical centres can also refer survivors to Alight during screening.

**If someone who has experienced SGBV needs a safe space or a refuge, can they access?**

Camps have safe spaces and are accessible for POCs.

Outside camps, there are GoR also has safe spaces available.

**Are asylum seekers eligible to receive government support – are there any barriers**

Asylum seekers are entitled to provision of same protection services as someone who has been granted refugee status – respect, humanitarian imperative are our key drivers when providing humanitarian assistance as a signatory of The Humanitarian Charter and Minimum Standards in Disaster Response, Alight does not discriminate.

Not aware of any barriers to asylum seekers accessing Gov safe spaces.

**Aside from protection, what other services does Alight provide?**

In urban settings, Alight only offer protection services.

In camps, also have child protection (in ETM Gashora), SGBV services in four camps. Also have Health and Nutrition including inpatient and outpatient services and for complicated cases which cannot be handled at the health centre, Alight will referral secondary health institutions including district hospital and for specialised cases these are referred to hospitals in Kigali). Community outreach services - identification, follow ups of POCs who drop out of nutrition programme. Screening and enrolment of mothers and children under five. Provision of water and sanitation services in Kiziba. Support POCs to engage in income generating activities, train them on financial literacy, provide start-up grants to help. Other cutting-edge activities – recently implemented simple health info management system for pregnant mothers who are required to attend ante natal sessions. Rather than go to clinics physical the IVR system enabled the POCs to dial from the comfort of their phones and listen to the sessions. Also piloting GBV awareness and prevention that was usually done through drama groups and drama contents will be digitised and will be accessible by dialling toll free line and listen to the content.

**You provide protection services for refugees and AS who are survivors of SGBV, however you provide more comprehensive support services for refugees in the camps, why not provide more services to urban based Asylum seekers and refugee?**

Interesting question but we believe that there other service providers appointed by UNHCR to respond at urban level.

### **Can urban refugees receive similar support from any other NGOs?**

YES – other UNHCR implementing partners that work in an urban setting.

Wouldn't know about size or how services are dispensed. You may need to reach out to UNHCR to clarify as they are responsible for allocating different sectors/services to different implementing partner.

### **Monitoring orgs have previously identified young women and girls living in refugee camps in R\* as being vulnerable to trafficking / How does the risk of trafficking among urban refugees compare?**

Alight has not come across [trafficking of urban refugees] in this particular matter. Alight has yet to get feedback from community activists that trafficking of urban refugees is a problem.

### **Do you provide SGBV services to AS/refugees who are members of the LGBT community?**

silence – we may come across those cases it's not ease to know. Our policy and obligations are very clear, no discrimination against that group but extra measures taken to respect their status and ensure our project design aligns with the needs to this group.

### **Do LGBT community have a profile in RWA?**

Not aware of much LGBT profile in RWA. If made aware of LGBT asylum seekers / refugees (both urban and camp based) Alight will adapt, redesign and provide services accordingly.

### **Is there any platform to air grievances?**

Yes, Kuja Kuja inline data collection platform, FGDs and meeting with Leaders.

For GBV we have a hot line number

### **Are you aware of urban refugees or asylum seekers relocating to the refugee camps? Why? /Specific characteristics or circumstances of the refugees who choose to relocate to the camps?**

No – problem is the other way i.e., refugees moving from camps to urban areas. When refugees move to urban areas, this increases their vulnerabilities to an extent women and girls may result into negative coping mechanisms including transactional sex.

### **Is it easy for camp/ non camp based refugees to find work?**

Government of Rwanda pledged to support refugees and host communities under the New York Declaration for Refugees and Migrants known as the Comprehensive Refugee Response Framework (CRRF), and the subsequent Strategic Plan for Refugee Inclusion (2019–2024) has accelerated efforts to increase socioeconomic inclusion for refugee populations and host communities. In line with this commitment, the Government of Rwanda have accorded refugees the right to work, and refugees are steadily being integrated into the country's health and education systems

### **Do police respond to complaints (harassment / violence) raised by urban refugees and AS]**

Yes

**Are you aware of any security incidents involving the police and refugees.**

Personally, I have only been in post 1yr 5months and hadn't heard of any incidents involving the police during that time.

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**A4. Institute of Legal Practice and Development (ILPD) and Ministry of Justice,  
Refugee law and refugee status determination process: training manual,  
October 2022**

**MINISTRY OF JUSTICE**

**REFUGEE LAW AND REFUGEE STATUS DETERMINATION PROCESS**

**TRAINING MANUAL**

**Developed by**

**THE INSTITUTE OF LEGAL PRACTICE AND DEVELOPMENT (ILPD)**

**October 2022**

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## GENERAL INTRODUCTION

The Training Manual on *Asylum and Refugee Law and the National Refugee status determination process* has been designed to equip different Government officials and professionals in private sector (Lawyers) with skills in legal framework and protection of refugees and asylum seekers so as to improve their protection and welfare. In this vein, six (6) different modules have been developed to meet the expectations of the participants. The first module “**Module 1: International Legal and Regional Frameworks Governing Refugees and asylum-seekers**” will deal with the historical background of refugees’ protection, together with the understanding of the key words and then it will tackle on the international and regional legal framework on refugees and asylum seekers. The second module, **Module 2: The protection of refugees and asylum seekers in Rwanda** will rely on the protection of refugees and asylum seekers in Rwanda. In this context, participants will be trained on the rights of refugees and their enjoyment in Rwanda as well as their levels of attachment. The third module, **Module 3: Refugee Status Determination Procedure**, deals with the procedure to be followed in order to get a refugee status until the appeals’ procedures. The module looks into other specific needs for asylum procedures. The module *four* **Module 4. Interviewing Applicants for**

**Refugee Status.** This module provides basic information which is specifically geared towards conducting interviews in the context of refugee status determination. The information presented in this module is by no means exhaustive, but represents a compilation of general instructions, rules and practical tips. **Module 5. Dealing with special categories of refugees: minors, women and girls .** This module offers to the participants the skills on the treatment of persons with a special status such as minors, women and girls as well as victims of human trafficking. There will be topics for each module dedicated to group discussions in order to increase the knowledge of participants and their critical thinking the proposed topics. The last module, **Module 6 deals with the Protection of refugees and asylum seekers from human trafficking.** It is intended to provide an overview on risks of human trafficking for migrants: male and female asylum seekers, refugees under international protection, migrants in detention centres, and unaccompanied and separate children.

## Module 1: International Legal and Regional Frameworks Governing Refugees and asylum-seekers

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### I. Learning objectives

By the end of the module, participants should;

- Know the historical background of international protection of refugees;
- Understand international and regional refugee law and standards
- Understand other international legal standards that protect asylum seekers and refugees: International Human Rights Law, International Humanitarian Law and other sources of law such as UNGA Resolutions & Declarations and UNHCR Committee Conclusions and other Guidelines
- Understand who a refugee is;
- Be aware of the roots causes of refugee flows at the international level;
- Distinguish between a refugee and an asylum seeker;

- Understand who an economic migrant is and how economic migrants differ from refugees
- Understand the institutions that protect forced migrants.
- Understanding the core obligation of *non-refoulement* under international law.

## **II. Core messages to be delivered**

- Everyone human being has a right to seek and enjoy asylum from persecution in other countries;
- Seeking asylum is not a voluntary act;
- It is the primary obligation of the State to protect forced migrants;
- None should ever be forced to return to a country where there is a real risk to their life (principle of non-refoulement) or to a country where they could be removed to another country where there is a real risk to their life (onward refoulement).

## **III. Participants**

This module is indicated for the following;

- Immigration officers: DGIE Interview/ Case Officer, High Court Judges, Lawyers, Refugee Status Determination Committee Members, MINEMA Eligibility Officers, MINEMA Ministerial Appeal Advisory Board Members, MINEMA Legal Advisor, DGIE Interview/ Case Officer, Refugee Welfare Committee

## **IV. Indicative content**

I.1. Historical background of refugees' protection

I.2. International refugee law and standard

I.2.1. The 1951 Convention relating to the Status of Refugees

I.2.2. The 1967 Protocol relating to the Status of Refugees

I.3. Regional laws and standards

I.3.1. The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa

I.3.2. The 1984 Cartagena Declaration



I.3.3. The Middle East and Asia

I.3.4. The European Refugee protection framework

I.4. Other international legal standards that protect asylum-seekers and refugees

I.4.1. International human rights law

I.4.2. Regional human rights instruments relevant to refugee protection

I.4.3. International humanitarian law

I.5. Other sources of law and guidance

I.5.1. UN General Assembly Resolutions and Declarations

I.5.2. UNHCR Executive Committee Conclusions

I.5.3. UNHCR Guidance

I.6. Understanding key terms and principles from refugee and asylum seeker protective instruments

I.6.1. Refugee

I.6.1.1. Interpretation of the key elements from the definition

I.6.2. Asylum seeker

I.6.3. Economic migrant

I.6.4. Forced migrant

I.6.5. Difference between the terms

I.7. Who should be excluded from refugee status?

I.8. The principle of *non-refoulement*

# MODULE 1: INTERNATIONAL LEGAL AND REGIONAL FRAMEWORKS GOVERNING REFUGEES AND ASYLUM-SEEKERS

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## I.1. Historical background of refugees' protection

Without understanding the larger global context from which it has originated and within which it is established and applied, one cannot get the sense of the current refugee law. Thus, making it more essential and relevant to understand how the current refugee's protection legal framework was born and evolved to date. This section provides details on the historical background of refugees' protection.

It is inevitable to discuss the history of refugee status without mentioning the United Nations High Commissioner for Refugees (UNHCR) as an international organ founded by the UN General Assembly<sup>1</sup> in 1950 with the mandate to particularly deal with refugee's protection matters.<sup>2</sup> UNHCR to function needed a legal framework within which its operations would be embedded, thus one year after its foundation, Convention Relating to the Status of Refugees was adopted in 1951.<sup>3</sup>

Although refugees have existed throughout the history of the World, it wasn't until the establishment of the League of Nations that the international community became aware of its duty to protect and assist refugees.<sup>4</sup> During the reign of Dr. Fridtjof Nansen who was the first High Commissioner for Russian refugees in 1921, Refugees were categorized by the League of Nations according to their country of origin.<sup>5</sup> The League of Nations which was later on turned into the UN built and abolished a number of international institutions for refugees in Europe up until 1950.<sup>6</sup>

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<sup>1</sup> Hammerstad, A., 2000. Whose security? UNHCR, refugee protection and state security after the Cold War. *Security dialogue*, 31(4), pp.391-403.

<sup>2</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 30 October 2022].

<sup>3</sup> Feller, E., 2001. The evolution of the international refugee protection regime. *Wash. UJL & Pol'y*, 5, p.129; Hammerstad (n [Error! Bookmark not defined.](#)) p.391.

<sup>4</sup> Feller (n 4) p.130.

<sup>5</sup> Feller (n 4) p.130.

<sup>6</sup> Feller (n 4) p.130.

Among others the International Refugee Organization (IRO) was created in 1947 even though its Constitution entered into force on 20 August 1948<sup>7</sup>, with the mandate to deal with the problem of refugees in Europe in the aftermath of the Second World War.<sup>8</sup> IRO had the following duties according to its constitution: repatriation; identification, registration, and classification; care and assistance; legal and political protection; transport; and re-settlement and re-establishment, in countries able and willing to receive them, of persons who were of the concern of the Organization<sup>9</sup>.

The IRO Constitution provides a much broader definition of “refugee” than its predecessors, adding “displaced persons” to its mandate, a category not previously defined in any legally binding international instrument.<sup>10</sup>

It is important to note that the IRO's definition of "refugee" considered the element of “persecution” and "reasonable fear" of it. All asylum-seekers were required to justify their fear of current or future persecution (subjective facts) with facts (objective facts), even if they had not been persecuted in the past.<sup>11</sup>

However, IRO was terminated prematurely<sup>12</sup>- as many opined -by June 30, 1950.<sup>13</sup> Slightly before its termination, the General Assembly agreed to replace it with the UNHCR in December 1949. Apart from UNHCR, the Intergovernmental Committee for European Migration (ICEM) played an important role at the regional level following the winding up of the IRO.<sup>14</sup>

The UNHCR was founded as a subsidiary organ of the General Assembly under Article Twenty-two of the UN Charter<sup>15</sup>, and it was initially constituted for a duration of three years.<sup>16</sup> In accordance with its statute, UNHCR was mandated to provide international protection for

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<sup>7</sup> de Andrade (n 8) p.71.

<sup>8</sup> Cf. L.W. Holborn, *The International Refugee Organization: a Specialized Agency of the United Nations its History and Work* (1946/1952), London/New York, Oxford University Press, (1956) p. 4535; see also de Andrade, J.H.F., 2011.

Brazil and the International Refugee Organization (1946–1952). *Refugee Survey Quarterly*, 30(1). p.66.

<sup>9</sup> IRO Constitution, Art. 2(1), see also de Andrade (n 8) p.72.

<sup>10</sup> de Andrade (n 8) p.72.

<sup>11</sup> de Andrade (n 8) p.73.

<sup>12</sup> de Andrade (n 8) p.73.

<sup>13</sup> Feller (n 4) p.130.

<sup>14</sup> R. Perruchoud, “From the Intergovernmental Committee for European Migration to the International Organization for Migration”, *International Journal of Refugee Law*, 1(4), 1989, 501-517; cited in de Andrade (n 8) p.73.

<sup>15</sup> See article 22 of the United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> [accessed 30 October 2022].

<sup>16</sup> Feller (n 4) p.130.

refugees<sup>17</sup> and to seek permanent solutions to their problems by assisting governments to facilitate their voluntary repatriation or their assimilation within new national communities.<sup>18</sup> The 1951 Refugee Convention is the first and still the only binding refugee protection instrument of universal character.<sup>19</sup>

## I.2. International refugee law and standard

### I.2.1. The 1951 Convention relating to the Status of Refugees

The 1951 Convention Relating to the Status of Refugees (The Refugee Convention) is the foundation of international refugee law. The Refugee Convention defines the term “refugee” and establishes the principle that refugees should not be forcibly returned to a territory where their lives or freedom would be threatened (The principle of *non-refoulement*), and sets out the duties of refugees and States’ responsibilities toward them.

It is however important to note that, because the Refugee Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are outside their country of origin and are refugees as a result of events occurring in Europe or elsewhere before 1 January 1951.

As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention. Thus, a Protocol to the Refugee Convention was drafted and adopted.

In other words, With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the Convention applicable to post-1951 and non-European refugees. As a result, the Protocol modified the refugee definition by removing this date restriction and the geographical limitation, meaning that a person could now be classified as a refugee as a result of events occurring in or outside Europe before or after 1 January 1951. The Protocol entered into force on 4 October 1967 and widened both the temporal and geographical scope of the Refugee Convention but does not otherwise change the

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<sup>17</sup> Chin *et al*, (n [Error! Bookmark not defined.](#)) p.1.

<sup>18</sup> Feller (n 4) p.131.

<sup>19</sup> Feller (n 4) p.130.

obligations under the Refugee Convention. Rwanda is a signatory to both the 1951 Convention and the 1967 Protocol.

The Convention consists of 46 articles setting out the rights and obligations of contracting States and refugees. Article 1 has three significant parts directly relevant to the process of refugee status determination:

- the definition of who is a refugee (“the inclusion clause” ),
- the conditions under which a refugee ceases to be a refugee (“the cessation clauses”),
- the circumstances whereby a person is excluded from being a refugee (“the exclusion clauses”

The Convention also contains very limited circumstances whereby a refugee may be expelled from a host country (“the expulsion clauses”). The Convention also includes provisions defining the legal status of refugees and the rights and obligations of refugees in the country of refuge as well as provisions dealing with the administrative and diplomatic implementation of the Convention (eg, Article 39 relating to signature, ratification, and accession of the Convention).

## **Who is a refugee under the 1951 Convention?**

According to the 1951 Convention relating to the Status of Refugees, a refugee is someone who:

- Has a well-founded fear of persecution because of his/her
  - o Race, Religion, Nationality, Membership in a particular social group, or Political opinion;
- Is outside his/her country of origin; and
- Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.
- Is not explicitly excluded from refugee protection or whose refugee status has not ceased because of a change of circumstances.

A person is a refugee as soon as the criteria contained in this definition are fulfilled. In other words, a person does not become a refugee because of a decision on an application for protection. Recognition of refugee status is declaratory: it confirms that the person is indeed a refugee for the purposes of Rwanda’s domestic legal framework.

This is the reason why asylum-seekers should not be returned to their countries of origin until their claims have been examined.

In addition to that, the 1951 convention considers refugee's individuals fleeing across borders for the following reasons:

- Persecution for the reasons of race, religion, nationality, membership of a particular social group or political opinion<sup>20</sup>;
- Armed conflict, which may root in and /or conducted along lines of race, ethnicity, religion, politics, gender or social group divides<sup>21</sup>;
- Violence perpetrated by organized gangs, traffickers, and other non-State actors, against which the State is unable or unwilling to protect<sup>22</sup>;
- Persecution on the basis of sexual orientation or gender identity<sup>23</sup>;
- Disasters (including drought or famine) where they are linked to situations of persecution or armed conflict rooted in racial, ethnic, religious, or political divides, or disproportionately affect particular groups<sup>24</sup>

Equally, other reasons may be found in various regional instruments such as in case of occurrence of:” events that seriously disturb the public order “in a manner that causes individuals to flee their country. Such circumstances may give rise to refugee status under the 1951 Convention<sup>25</sup>

On the other hands, It is also important to note that the 1951 Convention provided how a refugee may be understood, it also put in place exclusion and cessation clauses . I this vein, Article 1(D) excludes individuals who, at the moment the 1951 Convention took effect were getting protection or assistance from another UN organ or agency. This article applied mostly

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<sup>20</sup> Article 1 A of the 1951 Convention

<sup>21</sup> UNHCR, Guidelines on International protection No 12 : Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and /or 1967 Protocol relating to the status of refugees and the regional refugees definitions ,2 December 2016,HCR/GIP/16/12, [HTTP://WWW.refworld.org/docid/583595ff4.html](http://WWW.refworld.org/docid/583595ff4.html)

<sup>22</sup> See conflict and violence guidelines, above n 34, as well as UNHCR, Guidance Note on Refugee Claims relating to victims of organized gangs ,31 March 2010, [www.refworld.org/docid/4bb21fa02.html](http://www.refworld.org/docid/4bb21fa02.html)

<sup>23</sup> UNHCR, Guidelines on international protection No 7: The application of Article 1A(2) of the 1951 Convention and / or 1967 Protocol relating to the status of refugees to victims of trafficking and persons at risks of being trafficked , 7 April 2006, HCR/GIP/06/07, [WWW.refworld.org/docid/443679fa4.html](http://WWW.refworld.org/docid/443679fa4.html)

<sup>24</sup> UHCR, Guidelines on international protection No 9: Claims to refugee status based on sexual orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and /or its 1967 Protocol relating to the status of refugees , 23 October 2012, HCR/GIP/12/01, [WWW.refworld.org/docid/50348afc2.html](http://WWW.refworld.org/docid/50348afc2.html)

<sup>25</sup> UNHCR, The refugee concept under international law , Global compact for safe , orderly and regular migration, New York, 12-15 March 2018) , <https://www.unhcr.org/5aa290937>

to Korean who benefited aid from the United Nations Korean Reconstruction Agency (UNKRA) and Palestinians who received aid from the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA)<sup>26</sup>.

There are also other practices providing international protection to persons not qualifying as refugee under international and regional law simply because they have been forced to become displaced and crossed international borders. These persons may in certain circumstances also require protection, on a temporary or longer-term basis. This may include, for example, persons who are displaced across an international border in the context of disasters or the adverse effects of climate change<sup>27</sup>, but who are not refugees<sup>28</sup>. In such situations, a need for international protection would reflect the inability of the country of origin to protect against serious harm. Complementary protection mechanisms<sup>29</sup> and temporary protection or stay arrangements<sup>30</sup> have proven important tools to ensure that international protection is provided in these circumstances, including under international human rights law. UNHCR, on the basis of its international protection expertise, has consistently advised States in this regard.

In the same context, Article 1(F) excludes individuals:

With respect to whom there are serious grounds to consider that:

*(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*

*(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*

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<sup>26</sup> UNHCR, Handbook on Procedures for Determining Refugee Status under the 1951 Convention & and the 1967 Protocol relating to the status of Refugees, par 42, <https://www.unhcr.org/4d9358a9>

<sup>27</sup> The Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (“Nansen Initiative Protection Agenda”), endorsed by 109 States, aims to enhance understanding, provide a conceptual framework, and identify effective practices for strengthening the protection of cross-border disaster-displaced persons. The Agenda is available at <http://disasterdisplacement.org/the-platform/our-response>.

<sup>28</sup> Displacement in the context of disasters or the adverse effects of climate change would not usually, by itself, be grounds for refugee status. However, it should be recalled that some people fleeing in such contexts may be eugees.

<sup>29</sup> See UNHCR, Providing International Protection Including through Complementary Forms of Protection, 2 June 2005, EC/55/SC/CRP.16, as well as ExCom, Conclusion on the Provision on International Protection Including through Complementary Forms of Protection, No. 103 (LVI) of 2005.

<sup>30</sup> See UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014 (“TPSA Guidelines”), [www.refworld.org/docid/52fba2404.html](http://www.refworld.org/docid/52fba2404.html).

*(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.*

Likewise, individuals who deliberately avail themselves of the protection of their country of nationality or habitual residence or individuals who have received protection in a third country are also not considered refugees<sup>31</sup>. *See also* 1951 Convention relating to the Status of Refugees, art. 1(C).

### **I.2.2. The 1967 Protocol relating to the Status of Refugees**

The 1967 Refugee Protocol is independent of, though integrally related to, the Refugee Convention. As explained above, this Protocol lifted the time and geographic limits found in the Convention's refugee definition.

Most States (including Rwanda) have preferred to accede to both the Convention and the Protocol. In doing so, they reaffirm that both treaties are central to the international refugee protection system

By acceding to the Protocol, States (Rwanda in particular) agree to apply the core content of the 1951 Convention (Articles 2–34) to all persons covered by the Protocol's refugee definition, without limitations of time or place.

Together, the Refugee Convention and Protocol cover three main subjects:

- The basic refugee definition, along with terms for cessation of, and exclusion from, refugee status;
- The legal status of refugees in their country of asylum, their rights and obligations, including the right to be protected against forcible return, or *refoulement*, to a territory where their lives or freedom would be threatened;
- States' obligations, including cooperating with UNHCR in the exercise of its functions and facilitating its duty of supervising the application of the Convention.

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<sup>31</sup> International Justice Resource Center, Asylum and the rights of refugees , <https://ijrcenter.org/refugee-law/#Refugee-Status-Determinations-by-the-UNHCR>



### **I.3. Regional laws and standards**

The 1951 Convention and 1967 Protocol were designed to assure refugees the widest possible enjoyment of their rights. In order to respond to regional specificities, States in different parts of the world have developed regional laws and standards that complement the international refugee protection regime.

#### **I.3.1. The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa**

The conflicts that accompanied the end of the colonial era in Africa led to a succession of large-scale refugee movements. These population displacements prompted the drafting and adoption of not only the 1967 Refugee Protocol but also the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter Convention on Refugee Problems in Africa). The latter is, to date, the only legally binding regional refugee treaty. It asserts that the 1951 Refugee Convention is “the basic and universal instrument relating to the status of refugees”. It adopts the refugee definition found in the 1951 Convention, but also expands it to include any person compelled to leave his or her country because of

“external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality”.

This means that persons fleeing civil disturbances, widespread violence, and war are entitled to refugee status in States that are parties to the African Convention, even if they do not have a well-founded fear of persecution for one of the reasons set out in the 1951 Convention.

The Convention on Refugee Problems in Africa makes other important points. It affirms that “the grant of asylum to refugees is a peaceful and humanitarian act” that is not to be considered as an “unfriendly act” by any Member State of the OAU (now the African Union), and it requires States parties to take appropriate measure to lighten the burden of a State granting asylum “in a spirit of African solidarity and international cooperation”.

#### **I.3.2. The 1984 Cartagena Declaration**

Refugee protection in Latin America is regulated by what is known as the Cartagena Declaration on Refugees. Inspired by the 1969 OAU Convention, they adopted what is known as the Cartagena Declaration on Refugees.

Like the Convention on Refugee Problems in Africa, the Cartagena Declaration reaffirms the centrality of the 1951 Convention and its 1967 Protocol, the principle of non-refoulement, as well the importance of international cooperation to solve refugee problems. It recommends that the definition of a refugee used throughout the region be enlarged beyond persons who fulfil the 1951 Convention definition to include those who have fled their country

“because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”

In contrast, although the Declaration is not a legally binding instrument, most Central and South American countries apply its definition and many have incorporated it into their legislation. The Organization of American States (OAS), the UN General Assembly, and UNHCR’s Executive Committee have all endorsed the Cartagena Declaration.

Moreover, In addition to the above-mentioned instrument, the problem of diplomatic and territorial asylum within Latin America, is also dealt with in a number of regional instruments including the Treaty on International Penal Law, (Montevideo, 1889)<sup>32</sup>; the Agreement on Extradition, (Caracas, 1911)<sup>33</sup>; the Convention on Asylum, (Havana, 1928)<sup>34</sup>; the Convention on Political Asylum, (Montevideo, 1933)<sup>35</sup>; the Convention on Diplomatic Asylum, (Caracas, 1954)<sup>36</sup>; and the Convention on Territorial Asylum, (Caracas, 1954)<sup>37</sup>.

### **I.3.3. The Middle East and Asia**

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<sup>32</sup> Regional Treaties, Agreements, Declarations and Related, Treaty on International Penal Law, 23 January 1889, available at: <https://www.refworld.org/docid/3ae6b3781c.html> [accessed 30 October 2022].

<sup>33</sup> UNHCR (n [Error! Bookmark not defined.](#)) p.15.

<sup>34</sup> Regional Refugee Instruments & Related, *Convention on Asylum*, 20 February 1928, available at: <https://www.refworld.org/docid/3ae6b37923.html> [accessed 30 October 2022].

<sup>35</sup> Organization of American States (OAS), *Convention on Political Asylum*, 26 December 1933, available at: <https://www.refworld.org/docid/4f3d180a2.html> [accessed 30 October 2022].

<sup>36</sup> Organization of American States (OAS), *Convention on Diplomatic Asylum*, 29 December 1954, OAS, Treaty Series, No. 18, available at: <https://www.refworld.org/docid/3ae6b3823c.html> [accessed 30 October 2022].

<sup>37</sup> Organization of American States (OAS), *Convention on Territorial Asylum*, 29 December 1954, OAS, Treaty Series, No. 19, UN Registration: 03/20/89 No. 24378, available at: <https://www.refworld.org/docid/3ae6b36614.html> [accessed 30 October 2022].

There are no binding regional instruments addressing refugee law in the Middle East or Asia. In 1994, the Arab Convention on Regulating Status of Refugees in the Arab Countries was adopted by the League of Arab States (LAS), but it never entered into force. In October 2017 the League of Arab States adopted a new Arab Convention on refugees.

In 2001, Asian and African countries adopted the revised Bangkok Principles on the status and treatment of refugees. Both the proposed Arab Convention and the Bangkok Principles use the refugee definition contained in the Convention on Refugee Problems in Africa. The Arab Convention extends it further to persons fleeing disasters or other grave events disrupting public order.

In 2012, the Member States of the Organization of Islamic Cooperation adopted the Ashgabat Declaration at a ministerial conference in Turkmenistan. The Declaration recognizes that “over fourteen centuries ago, Islam laid down the basis for granting refuge, which is now deeply ingrained in Islamic faith, heritage and tradition”.

Most importantly, the ministers also noted the “enduring value and relevance in the twenty-first century” of the 1951 Convention and 1967 Protocol and “the importance of respecting the principles and values that underlie these instruments”.

#### **I.3.4. The European Refugee protection framework**

The most far-reaching regional developments have come from the European Union (EU), which in 1999 decided to create a common European asylum system based on the “full and inclusive application of the Geneva Convention”. Since then, four key legislative instruments have been adopted in original and revised (or “recast”) versions. Each adds content to refugee law in an area not addressed by the 1951 Convention.

These instruments concern:

- a. temporary protection;
- b. the reception of asylum-seekers;
- c. qualification for refugee status or “subsidiary protection” and the rights and status to which beneficiaries are entitled; and
- d. standards for asylum procedures.

In addition, the “Dublin III Regulation” sets out the criteria for determining which EU Member State or other participating country is responsible for examining an asylum application. To provide operational support, two EU agencies were established: The European external borders agency Frontex in 2005 and the European Asylum Support Office (EASO) in 2010.

The Charter of Fundamental Rights, adopted in 2007, has a status equal to that of the EU’s founding treaties. It includes provisions on the right to asylum and protection from removal, expulsion, or extradition to a serious risk of being subject to the death penalty, torture, or other inhuman or degrading treatment or punishment.

The Court of Justice of the European Union (CJEU) has jurisdiction to interpret these EU asylum instruments and to rule on any alleged infringements by the Member States. Together with the European Court of Human Rights of the Council of Europe, which has addressed asylum issues in the context of the European Convention on Human Rights and Fundamental Freedoms, these courts have significant influence on the wider development of international refugee law.

#### **I.4. Other international legal standards that protect asylum-seekers and refugees**

As explained above, international refugee law does not operate in isolation. It is complemented by other bodies of law, notably international human rights law, international humanitarian law, and international criminal law.

##### **I.4.1. International human rights law**

Like all people, asylum-seekers and refugees are protected by international human rights law. This body of law extends to everyone within a State’s territory or under its authority or jurisdiction. As the 1948 Universal Declaration of Human Rights affirms: “All human beings are born free and equal in dignity and rights.” Refugees and asylum-seekers are thus entitled to two partially overlapping sets of rights: those which States are obliged to respect, protect and fulfil under international human rights law, and the specific rights of refugees.

Under international human rights law, some guarantees, such as the prohibitions of torture and slavery, cannot be restricted or suspended for any reason. Others may be derogated from under

specific conditions, such as to uphold public order or health or protect the rights of others. Derogations must not be applied in a discriminatory manner, must be officially proclaimed and in accordance with the law. The Convention against Torture and the Convention on the Rights of the Child are human rights instruments that provide important protections to asylum-seekers and refugees. There are other human rights treaties that also complement international refugee law in important ways.

#### **I.4.2. Regional human rights instruments relevant to refugee protection**

Numerous regional instruments are relevant to refugee protection. Some of the most important are listed below. In Africa, regional human rights instruments that are relevant to the protection of refugees include the African Charter on Human and Peoples' Rights;<sup>38</sup> its Protocol on the Rights of Women in Africa; the African Charter on the Rights and Welfare of the Child; and the Great Lakes Protocol on Property Rights of Returning Persons.

In the Americas, relevant human rights instruments include the American Declaration on the Rights and Duties of Man; American Convention on Human Rights; its Additional Protocol in the Area of Economic, Social and Cultural Rights; the Inter-American Conventions on the Forced Disappearance of Persons; to Prevent and Punish Torture; on the Prevention, Punishment and Eradication of Violence against Women; and on the Elimination of All Forms of Discrimination against Persons with Disabilities.

In Asia, the South-Asian Association for Regional Cooperation (SAARC) has agreed a Social Charter, as well as a Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia. The Association of Southeast Asian Nations (ASEAN) issued the ASEAN Human Rights Declaration in 2012.

In Europe, relevant Council of Europe instruments include the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, notably Nos. 1, 4, 7, and 12; the European Convention for the Prevention of Torture and Inhuman or Degrading

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<sup>38</sup> Its Article 2 clarifies this by stating that 'every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as national and social origin. Article 5 of the Charter prohibits all forms of exploitation particularly slavery, slave trade, torture, inhumane or degrading punishment and treatment. Violation of this article entitles the victim of sexual abuse to seek and obtain asylum in third states. Article 5 is critical in avoidance of refugee out flows from states of origin. However, asylum seekers and refugees must not be subjected by receiving states to such ill treatment or any other ill treatment prohibited in line with Article 5 of the charter.<sup>38</sup>

Treatment or Punishment; the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the Convention on Preventing and Combating Violence against Women and Domestic Violence; and the European Social Charter (revised). In the EU, there are various Directives and Regulations that underpin the common European asylum system, as well as the Charter of Fundamental Rights and Freedoms. (See Chapter 1.3 Regional refugee laws and standards above.)

In the Middle East and North Africa, regional human rights instruments relevant to refugee protection include the Arab Charter on Human Rights, as well as the Organization of the Islamic Conference (OIC) Rabat Declaration on Child's Issues in OIC Member States; the OIC Covenant on the Rights of the Child in Islam; and the OIC Cairo Declaration on Human Rights in Islam

### **I.4.3. International humanitarian law**

International humanitarian law, also known as the laws of war or of armed conflict, is a complex field that predates human rights and refugee law. It seeks to limit the means and methods of warfare and the effects of armed conflict on persons who are not or who are no longer participating in it. A major part of international humanitarian law is contained in the four Geneva Conventions of 1949 and two Additional Protocols agreed in 1977.

According to international humanitarian law, persons who do not take part in the fighting, whether they have been displaced or not, should be respected, protected against the effects of war, and provided with impartial assistance. Since many refugees and displaced persons find themselves in the midst of international or internal armed conflict, its principles can also help protect them.

International humanitarian law is binding on all parties to a conflict, both government forces and non-state armed groups. The most serious violations of international humanitarian law are regarded as war crimes. Under Article 1F of the 1951 Convention, persons with respect to whom there are serious reasons for considering that they have committed "war crimes" must be excluded from refugee status.

Both international humanitarian law and international criminal law are relevant to this determination.

## **I.5. Other sources of law and guidance**

### **I.5.1. UN General Assembly Resolutions and Declarations**

Every year, the General Assembly considers a report on UNHCR's work and adopts a resolution on this subject. It has also adopted numerous resolutions on specific aspects of refugee protection, such as unaccompanied refugee minors, human rights and mass exoduses, and the situation of specific countries receiving large flows of refugees.

In September 2016, the General Assembly adopted the New York Declaration for Refugees and Migrants and launched intergovernmental negotiations to reach a “global compact for safe, orderly and regular migration”. Like the Universal Declaration of Human Rights adopted in 1948, the New York Declaration is a political document. It puts refugees at the centre of political attention and encourages a broad, whole-of-society approach to refugee protection.

### **I.5.2. UNHCR Executive Committee Conclusions**

The Executive Committee (often known as ExCom) is UNHCR's governing body (see also Chapter 2.4). It meets in plenary session once each year to discuss UNHCR's work and adopts Conclusions by consensus. These Conclusions represent the agreement of nearly 100 countries over many decades, and form an essential part of the international refugee protection framework. Governments, ministries and parliamentarians often consult Executive Committee Conclusions when developing laws and policies. In addition, national and regional courts regularly refer to and rely on them as “soft law” instruments that are persuasive and even authoritative sources on matters of policy, legal practice and interpretation. Executive Committee Conclusions thus represent collective international positions, including legal expertise, on refugee matters. They help advance common understandings and to set standards in many areas of refugee protection and solutions, and are one way in which the international protection regime is further developed.

### **I.5.3. UNHCR Guidance**

UNHCR itself issues guidance on international refugee law. Amongst the most authoritative is its Handbook on procedures and criteria for determining [refugee status](#) (1979, reissued 2019). Many national asylum authorities use this Handbook to guide their decision-making, and it is regularly quoted by courts around the world. UNHCR also issues Guidelines on International

Protection to complement the Handbook. These Guidelines provide more detailed, contemporary guidance on the interpretation of provisions of the 1951 Convention/1967 Protocol and other international protection matters. They can be helpful to parliamentarians reviewing national legislation and practice

## **I.6. Understanding key terms and principles from refugee and asylum seeker protective instruments**

Before going deeper, this section provides for the definitions of some basic concepts.

### **I.6.1. Refugee**

The primary source to consult for the definition of a “refugee” must be the 1951 Refugee Convention as its content has a binding character. The Refugee Convention specifies **Refugee as** – a person who, “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>39</sup>

#### **I.6.1.1. Interpretation of the key elements from the definition**

##### **a) “well-founded fear of being persecuted”**

###### **The subjective element: fear**

Fear is, by definition, a state of mind and hence a subjective condition, which will depend on the individual’s personal and family background, his or her personal experiences, and the way in which he or she interprets his or her situation. In practice, any expression of unwillingness to return is normally sufficient to establish the “fear” element of the refugee definition. If an applicant does not expressly state that he or she is afraid, this may often be inferred from the objective circumstances, for example where there is a clear risk of persecution upon return. In most cases, the mere fact of having applied for refugee status is sufficient to indicate a fear of return.

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<sup>39</sup> Convention relating to the Status of Refugees”, Art. 1A(2), 1951 as modified by the 1967 Protocol).



### **The objective element: well-founded**

Whether or not the fear is “well-founded” must be assessed in the context of the situation in the applicant’s country of origin and in light of his or her personal circumstances. The decision-maker also needs to develop a detailed understanding of the applicant’s background, profile and experiences. Experiences of family members and/or other persons with a comparable profile will also be relevant.

The applicant’s credibility and his or her fear must then be evaluated against objective information on the conditions in the country of origin, and/or a holistic assessment of the applicant’s credibility, based on all available evidence and testimony. Reliable country-of-origin information is an essential resource in this regard. Asylum-seekers are not required to prove their fear “beyond reasonable doubt”, or that it would be “more probable than not” that the feared harm will materialize. The adjudicator should consider the applicant’s fear well-founded if there is a reasonable possibility that the applicant would face some form of harm if returned to the country of origin or habitual residence.

### **Persecution**

The applicant’s well-founded fear must relate to persecution. The concept of “persecution” is not defined in the 1951 Convention. From Article 33 of the 1951 Convention it can be inferred that a threat to life or physical freedom constitutes persecution, as would other serious violations of human rights. When determining whether particular acts amount to persecution, decision-makers are aware that under international human rights instruments, States may never legitimately restrict certain fundamental rights. These are referred to as “non-derogable”. Examples of such core rights include:

- The right to life;
- The right to freedom from torture or cruel, inhuman or degrading treatment or punishment;
- The right to freedom from slavery or servitude;
- The right to recognition as a person before the law;
- The right to freedom of thought, conscience and religion.

Not every violation of an applicant’s human rights or instance of discrimination or harassment is serious enough to be considered persecution. In general, serious violations of non-derogable

rights would normally constitute persecution. Serious breaches of other rights would generally also be considered persecution, particularly if these have a systematic or repetitive element.

The threshold of persecution is clearly met if the applicant's enjoyment of fundamental human rights – for example, access to the basic means of survival – is seriously restricted. Moreover, discriminatory measures which, taken separately, would not amount to persecution, may have the combined effect of rendering the situation for the applicant intolerable. This would be considered persecution on “cumulative grounds”, with the aim of undertaking a holistic assessment of all relevant factors.

**a) Reasons:**

*Race*

“Race” should be broadly interpreted as any kind of distinctive ethnic characteristic, whether real or perceived. Minority groups are more likely to be persecuted than majorities, but this is not always the case: for example, in apartheid South Africa, the racial majority was oppressed by the minority. Men and women in “mixed” marriages, in which each spouse comes from a different ethnic or racial background, may face problems which in some cases may amount to persecution. In such cases, it is particularly important to understand the underlying social context. Another form of persecution which is frequently based on race is a denial of citizenship and the loss of rights that this entails.

*Religion*

The right to have (or not to have) a religion is absolute and non-derogable, while international human rights law permits certain restrictions to the right to manifest one's religion. Examples of persecution for reason of religion include the following:

- Serious restrictions on the exercise of religious freedom, for example prohibition of membership in a religious community or of religious instruction;
- Serious discrimination because of religious practice or membership in a given religious community;
- Forced conversion, or forced compliance or conformity with religious practices, provided that such measures have a sufficiently serious impact on the individual concerned.

### *Nationality*

“Nationality” as a ground for refugee status does not only refer to “citizenship”, but also extends to groups of people defined through their real or perceived ethnic, religious, cultural or linguistic identity, regardless of whether this difference has been formalized legally.

### *Membership of a particular social group*

This Convention ground applies where an applicant belongs to a group of persons who share a common characteristic other than the risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is:

- Innate – such as sex, race, caste, kinship ties, linguistic background, or sexual orientation;
- Unchangeable – for example, because it relates to the individual’s past history, such as former military officer, former trade union member, or former landowner; or
- Otherwise fundamental to identity, conscience or the exercise of one’s human rights, such that the person should not be expected to change or reject it. The group must be set apart in some way from others, either because it sees itself as being different, or because it is perceived as such by the persecutor. It does not matter whether the members of the group know each other and associate together, nor is it necessary that it be a small group – thus, for example, there may be situations in which it is appropriate to recognize “women” generally as a particular social group.

### *Political opinion*

The concept of “political opinion” as a ground for recognition as a refugee should be interpreted in a broad sense, as encompassing any opinion concerning matters on which the machinery of the state, government or society is engaged. It goes beyond identification with a specific political party or recognized ideology, and may include for example an opinion on gender roles. The opinion does not necessarily need to be different to that of the Government – for example, it could be different to another group from which the Government cannot protect the individual.

The mere fact of holding a political opinion which is different from that of the government is not in itself a ground for claiming refugee status. The key question is whether the applicant holds – or is perceived to hold – opinions which are not tolerated by the authorities

or by the community, and whether he or she has a well-founded fear of persecution for this reason. A political opinion may be imputed through association.

#### **b) Outside Country of Nationality/Former Habitual Residence**

A person can only be a refugee if he or she is outside his or her country of nationality, or for those who are stateless (that is, without citizenship of any country), their country of habitual residence. This is a factual issue, which is to be established on the basis of documents, statements or any other information submitted by the applicant or obtained from other sources.

Grounds for recognition as a refugee may arise when the individual concerned is already out of the country – in such situations, the person may become a refugee while being in the host country (“sur place”).

**Notice:** It is important to remind that in Rwanda, in accordance with the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, the definition of refugee is expanded to include persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order. Where an individual has fled their country in these circumstances, they would be eligible for Refugee Status.

#### **I.6.2. Asylum seeker**

In order to understand the difference between Asylum seeker and a refugee, a good starting point should be the meaning of a refugee. As explained above someone is considered as a refugee if

*“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.” Additionally, a refugee is someone who*

*seeks refuge in a foreign country because of war and violence, or out of fear of persecution.*"<sup>40</sup>

Regarding the distinction between "refugees" and "asylum seekers", they are usually referred to as asylum seekers until their asylum application has been duly processed and approved by the host country. Asylum seekers whose applications are denied may lose their legal basis to remain in the host country and may be deported.<sup>41</sup> They will be often offered alternative form of status, unless the individual wishes to voluntarily leave Rwanda. In other words, asylum seekers are those people who have crossed an international border in search of protection, but whose claims for refugee status have not yet been decided.<sup>42</sup>

There are differences from country to country in the rights and benefits of refugee status, as well as what the asylum application process entails.

### **I.6.3. Economic migrant**

According to the UNHCR, a migrant, as opposed to a refugee chooses to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases for education, family reunion, or other reasons. Moreover, in the view of UNHCR, unlike refugees who cannot safely return home, migrants face no such impediment to return. If they choose to return home, they will continue to receive the protection of their government.<sup>43</sup>

A migrant is a person who, for reasons other than those contained in the definition of a refugee, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a personal nature. If he is moved exclusively by economic considerations, he is an economic migrant and not a refugee.<sup>44</sup>

### **I.6.4. Forced migrant**

Forced migration consists of some of legal or political categories, all of which contain humans who have been compelled to escape their houses and are searching for shelter elsewhere. The

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<sup>40</sup> Chin, Aimee, and Kalena E. Cortes. "The refugee/asylum seeker." In *Handbook of the economics of international migration*, vol. 1, North-Holland, 2015. p.1.

<sup>41</sup> Chin *et al*, (n [Error! Bookmark not defined.](#)) p.1.

<sup>42</sup> Castles (n [Error! Bookmark not defined.](#)) p 2.

<sup>43</sup> UNHCR, "UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?" available at <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>, accessed on 30/10/2022.

<sup>44</sup> UNHCR (n [Error! Bookmark not defined.](#)) p 22.

Popular utilization has a tendency to name them all 'refugees', however in legal context refugees are certainly pretty a specific category. The majority of forced migrants flee for motives now no longer explicitly acknowledged with the aid of using global refugee law, and a lot of them are displaced inside their very own country of origin.<sup>45</sup>

### **I.6.5. Difference between the terms**

As far as the difference between refugee, asylum seekers, economic migrants and forced migrants is concerned, one needs to mention that Refugees are those considered to qualify under refugee context under the Refugee convention, and this implies that refugee definition is provided for by the refugee convention in force. While Asylum seekers are those who are in the process of gaining a refugee status under a country's domestic framework, economic migrants do not necessarily have to be under any threat for them to move, they move with an intent to improve their economic life, which draws a distinction line with forced migrants who move from one place to another, because of several reasons but not meeting the criteria under the refugee legal frame work.

### **I.7. Who should be excluded from refugee status?**

Article 1 of the 1951 Convention contains several provisions whereby persons who meet the “inclusion” criteria of the refugee definition are nevertheless not eligible for international protection. According to Article 1F of the 1951 Convention, a person is not eligible for protection as a refugee if there are serious reasons for considering that he or she has:

- Committed a crime against peace, a war crime or a crime against humanity;
- Committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee; or
- Been guilty of acts contrary to the purposes and principles of the United Nations.

The rationale for these exclusion clauses is twofold. First, certain acts are so grave that they render the perpetrator undeserving of refugee protection. Secondly, the refugee protection framework should not stand in the way of serious criminals facing justice.

It is important to note that National legislation should use the language of Article 1F *verbatim*, as it exhaustively enumerates the grounds for exclusion based on criminal conduct or

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<sup>45</sup> Castles (n [Error! Bookmark not defined.](#)) p 2.

involvement in acts contrary to the purposes and principles of the United Nations. These grounds for exclusion should not be confused with the exceptions to the *non-refoulement* rule that are set out in Article 33(2) of the 1951 Convention and concern situations where the refugee is a danger to the security of the host country, or to its community.

For exclusion to be justified, it must be established, on the basis of clear and reliable evidence, that there are serious reasons for considering that the person concerned was individually responsible for acts that fall within one or more of the three categories set out in Article 1F.

### **I.8. The principle of *non-refoulement***

The principle of non-refoulement is the cornerstone of the international legal regime for the protection of refugees. Article 33 of the Convention relating to the Status of Refugees (1951 Refugee Convention) prohibits returning (refouler) a refugee – and hence also a person seeking asylum as they can potentially be a refugee – to a risk of persecution.

According to article 33 of the Convention,

“[n]o contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

It protects refugees against being returned to a risk of persecution. In addition, international human rights law has made *non-refoulement* an integral component of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, enshrined in Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The United Nations (UN) Human Rights Committee (HRC), which monitors the implementation of the ICCPR, has interpreted Article 7 – and to some extent, Article 6 on protecting the right to life – as implying that return to torture and other forms of ill-treatment is also prohibited. According to the UN HRC, “States Parties must not expose individuals to the danger of torture or cruel or inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*”.<sup>46</sup>

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<sup>46</sup> UN, Human Rights Committee (1992).

The prohibition of *refoulement* is also explicitly stipulated in Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which states that,

*“[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”<sup>47</sup>*

It is important to note that the principle of *non-refoulement* enshrined in the 1951 Refugee Convention not only covers recognised refugees but also asylum seekers awaiting status determination. Furthermore, it bans both the return to a country where a person would be at risk of persecution or serious harm (direct *refoulement*), and the return to countries where individuals would be exposed to a risk of onward removal to such countries (indirect or onward *refoulement*).

#### **QUESTION OF DISCUSSION:**

- International refugee law comprises legal instruments with a common, major feature. What is it?
- The scope of the 1951 Convention was initially limited in two ways. What were they?
- Which of the two limitations was removed by the 1967 Protocol?
- The Convention definition of a refugee includes four basic conditions. What are they?
- The OAU Convention gives a broader definition than the 1951 Convention. What does it include?
- An important Declaration, with provisions similar to those of the OAU Convention, was signed in Latin America in 1984. What is its name?
- The Universal Declaration of Human Rights defines human rights and fundamental freedoms. Articles 13, 14 and 15 concern rights of special interest to refugees. What are they?

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<sup>47</sup> UN, GA, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984.



# MODULE 2: THE PROTECTION OF REFUGEES AND ASYLUM SEEKERS IN RWANDA

## Learning objectives

At the end of the module, participants will be able to Understand:

- The relevant legal frameworks governing the protection of refugees and asylum seekers at the International and their impact on Regional and National legal frameworks.
- the Refugee Status Determination process in Rwanda;
- the circumstances under which a person does not qualify to be granted refugee status; the circumstances under which a person can cease to be a refugee
- Complementary and temporary forms of international protection
- the principle of *non refoulement* and expulsion
- Non-discrimination and human rights of refugees and asylum seekers under Rwandan law
- Non-penalization for irregular entry
- Reception facilities and assistance
- Identity and travel documents for refugees
- Confidentiality and protection of personal data
- Rights and obligations of refugees

## Indicative content

II.1. Normative and Institutional framework

II.1.1. What is the Rwandan Normative Framework on refugee protection?

II.1.2. What is the Rwandan Institutional refugees' management Framework?

II.2. State responsibility in protecting refugees

II.3. Refugees rights and levels of attachment

II.3.1. Subject to a state jurisdiction

II.3.2. Freedom of Movement

II.3.3. rights to work and rights at work

II.3.4. Right to private property

II.3.5. Access to financial services

II.4. Obligations/duties of refugees and asylum seekers

## **MODULE 2: THE PROTECTION OF REFUGEES AND ASYLUM SEEKERS IN RWANDA**

Protection is first and foremost the responsibility of States. Each State is responsible for respecting, protecting and fulfilling the rights of its citizens, including in situations of internal displacement and return. International protection is only needed when this national protection is denied or is otherwise unavailable. All States have a general duty to provide international protection under international law, while the 1951 Refugee Convention and its 1967 Protocol set out specific obligations for States which are party to these instruments. At this point, primary responsibility for providing international protection lies with the country in which the individual has sought asylum.

### **II.1. Normative and Institutional framework**

#### **II.1.1. What is the Rwandan Normative Framework on refugee protection?**

Rwanda has been a State party to the 1951 Convention Relating to the Status of Refugees since November 1979. It is also a State Party to the 1967 Protocol; related to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as the majority of International and regional human rights treaties such as for instance the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) ratified in 2012

Based on article 95 of the 2003 Constitution of the Republic of Rwanda (as revised in 2015), the above-mentioned ratified international conventions are domestically applied, and integrated into the national organic laws.

The right to asylum is enshrined in the Rwandan Constitution in Article 25. In June 2014, Law No. 13ter/2014 of 21/05/2014 relating to Refugees was published and superseded earlier

Refugee Laws of 2001 and 2006. The latter, complemented by Prime Minister's Order No 112/03 of 2015 mirrors most of the provisions of the 1951 Convention. Furthermore, article 18 of the 2014 Law stipulates that,

“without prejudice to other laws, any person having obtained refugee status in Rwanda shall enjoy the rights and liberties provided for by international instruments on refugees ratified by Rwanda”.

Therefore, by virtue of this broad formulation and in the absence of any contradictory legal provisions, refugees are legally entitled to enjoy a wide range of social, economic, civil and political rights. Rights accorded to asylum seekers and refugees are reflected in Law No 13ter/2014 of 21/05/2014 relating to Refugees and Ministerial Instructions no02/2016 of 1/6/2016. These instruments may further benefit from more precision given to specific rights granted to refugees as well as asylum seekers

The National Refugee Status Determination Committee (NRSDC), which is in charge of RSD in Rwanda, was established by the 2015 Prime Minister's Order Determining the Organisation and Functioning of the National Refugee Status Determination Committee (NRSDC) and Benefits granted to its Members. This Ministerial Order defines the composition, functions and frequency of meeting of the Committee and contains provisions outlining access to asylum procedures. Under this framework, the Directorate-General of Immigration and Emigration (DGIE) performs an initial screening of asylum-seekers before they are referred to NRSDC. Article 7 of the Ministerial Order includes the provision of UNHCR being invited to NRSDC committee meetings as an observer, in line with Article 35 of the 1951 Convention.

The Rwandan laws considers, not only, a refugee as “a person who has been granted asylum in accordance with this law and international instruments relating to the status of refugees ratified by Rwanda<sup>48</sup>” but also outlines the procedures of admission of asylum seekers in the country and of the refugee status determination and the rights and duties of refugees.<sup>49</sup>

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<sup>48</sup> Article 2 (1) of the Law № 13/2014 of 21/05/2014, O.G No. 26 of 30 June 2014.

<sup>49</sup> See below.

### II.1.2. What is the Rwandan Institutional refugees' management Framework?

The Ministry in Charge of Emergency Management (MINEMA) is the primary institution in charge of refugee management at the national and local level. In the field of refugee protection and assistance MINEMA shares decision-making and operational responsibility with a wider spectrum of government actors, such as the Ministry of Finance and Economic Planning (MINECOFIN), the Ministry of Justice (MINIJUST), the Ministry of Local Government (MINALOC), the ministry of Foreign Affairs and International Cooperation (MINAFFET), the Ministry of Health (MoH), the Ministry Directorate General Of Immigration and Emigration (DGIE), AND Rwanda National Police (RNP).

## II.2. State responsibility in protecting refugees

Rwanda, individually or jointly with the international community as a whole, have the primary responsibility to provide protection to refugees present on their soil. International treaties and covenants require States parties to those instruments to abide by their provisions. The international community holds States accountable if they violate the rights of refugees, although there is no clear mechanism for enforcement. Article 14 of the Universal Declaration of Human Rights recognizes the right to seek asylum from persecution as a basic human right.

Further, countries of first asylum have an obligation to protect all basic human rights, including the right of an individual not to be returned to a country where his or her life would be threatened on account of one of the protected grounds.<sup>50</sup> This *non-refoulement* provision is reinforced by a similar *non refoulement* provision in Article 3 of the United Nations Convention Against Torture, although Article 3 does not have an “on account of” requirement and differs in other respects.<sup>51</sup>

Specifically, the right of asylum has been said to comprise certain specific manifestations of state conduct:

- (i) to admit a person to its territory;
- (ii) to allow the person to sojourn there;

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<sup>50</sup> United Nations General Assembly, Convention relating to the Status of Refugees (28 July 1951), United Nations, Treaty Series, vol. 189, p. 176.

<sup>51</sup> United Nations General Assembly, Convention Against Torture (10 December 1984), United Nations Treaty Series, vol. 1465, p. 85.

- (iii) to refrain from expelling the person; and
- (iv) to refrain from extraditing the person

The starting point for international protection is the admission of people fleeing persecution and violence to a territory where they can seek asylum and find safety. It is thus crucial that:

- Governments understand the State's non-refoulement obligations, in order to establish entry systems that uphold these obligations; and
- Border guards, immigration officials and other government personnel who have first contact with foreigners arriving by land and air have a clear understanding of the principle of *non-refoulement* and their resulting responsibilities, including mechanisms to refer new arrivals to the appropriate authorities within the country.

In this regard, Article 8 paras. 2 and 3 of law No 13ter/ 2014 of 21/05/2014 relating to Refugees grant an asylum seeker a residence permit, valid for three (3) months upon application for refugee status. According to this article,

The local authority to whom the asylum seeker reports shall take him/her to the nearest immigration and emigration office within twelve (12) hours. This office shall register the asylum seeker within twenty-four (24) hours from his/her arrival.

The department in charge of immigration and emigration shall review the case of the asylum seeker and grant to him/her a temporary residence permit valid for three (3) months.

When an asylum-seeker has lodged an application, whether at the border or within the territory, the state in question has usually taken upon itself to examine that application in what is known as Determination of Refugee Status procedure<sup>52</sup>. Where the asylum-seekers are recognised as a refugee, the state has almost invariably granted him permanent asylum, i.e. the right to remain in the country indefinitely.

### **III.3. Refugees rights and levels of attachment**

#### **III.3.1. Subject to a state jurisdiction**

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<sup>52</sup> See the following module.

A select few core rights are defined as applicable without regard to attachment level. Despite the fact that, in practice, these rights will typically accrue to a refugee simultaneously with those that apply once the refugee arrives on the territory of a State Party, there are some situations in which a refugee will still be subject to the control and authority of a State Party even if he or she is not physically present on its territory or at its border. These rights include right to Non-discrimination<sup>53</sup>; right to Moveable and immoveable property<sup>54</sup>; Access to courts<sup>55</sup>; Rationing<sup>56</sup>; Education<sup>57</sup>; Fiscal charges<sup>58</sup> and Prohibition of expulsion or return - *refoulement*.<sup>59</sup>

### **III.3.2. Freedom of Movement**

Normal refugees are settled upon arrival in camps designed to host and take care of them. They usually settle in camps according to their regions of origin, which determines the location of the camp and their affiliations. Article 18 of the Refugee law enshrines into national law the enjoyment of all rights accorded to the refugees by the 1951 Convention, including freedom of movement. Refugees can therefore move and settle wherever opportunities are available within the country including in urban areas. However, camp-based refugees need to request permission to leave the camp. Those who chose to reside outside of the camp may do so in line with the article (25(2) of the refugee law.

It is important to mention that the permission is issued for a period of three months, on the recommendation of the camp management, and must be renewed at the camp. If not renewed, the refugees lose their entitlement to camp-based assistance, except access to health insurance and legal support.

In practice, once refugees have settled in a new place of residence, they have to report to the local authority at the village level, as do other citizens. Like nationals, refugees are expected to carry an identity document whenever moving around (Proof of Registration [PoR] or Refugee ID).

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<sup>53</sup> Article 3 of refugee convention of 1951

<sup>54</sup> Article 13 of refugee convention of 1951

<sup>55</sup> Article 16(1) of refugee convention of 1951

<sup>56</sup> Article 20 of refugee convention of 1951

<sup>57</sup> Article 22 of refugee convention of 1951

<sup>58</sup> Article 29 of refugee convention of 1951

<sup>59</sup> Article 33 of refugee convention of 1951

### **III.3.3. Rights to work and rights at work**

Those recognised as refugees and granted Refugee Status in Rwanda are entitled to seek wage-earning employment. In the absence of a specific legal provision on refugees' right to work and in accordance with article 18 of the refugee law, recognized refugees in Rwanda benefit from the same level of worker protection as nationals, including salary levels in the private sector. No additional documentation or work permits are needed for refugees. To apply for a job, they need only to provide a document that established their identity and legal status.

Refugees who hold a refugee ID Card face an easier process for accessing employment than those who hold only proof of Registration.

Moreover, apart from seeking wage-earning an employment, refugees are allowed to open businesses in the same manner as nationals and register them under their own name. Camp-based refugees can register their businesses at the sectoral level and have to pay related monthly taxes. In urban areas, only refugees with a refugee ID card can register their businesses at the Rwanda Development Board (RDB). They are issued with a certificate of registration and a Tax Identification Number (TIN) and have the same tax obligations as nationals.

### **III.3.4. Right to private property**

Article 34 and 35 of the Constitution enshrine the inviolable right to private property, including the right to land. Law N° 27/2021 of 10/06/2021 governing land in Rwanda entitles foreigners to an emphyteutic lease (Contract that allows the holder the perpetual right to the enjoyment of a property within a specified time) over land and a land concession (a contract between the Government and another actor that gives specific rights to control an area of land for a fixed period of time and for the conduct of specific activities in that area).

Article 18 of the refugee law enables refugees to enjoy the provisions relating to emphyteutic land leases and land concessions for business and agricultural purposes without obstacle.

Nevertheless, it is important to note that Asylum seekers cannot exercise this right until a decision has been taken on their status.

Article 12/c of the 2016 Ministerial Instructions on Determining the management of Refugees and Refugee Camps provides for the right for refugees to own immovable and movable property in a similar way to Rwandan citizens.

Refugees in camps are provided shelters and for other basic needs but are not included in social housing programs intended for Rwanda nationals, nor are they part of most other formal Government social protections initiatives, except for the Community based Health Insurance.

### **III.3.5. Access to financial services**

Refugees can open a bank account using their Government-issued refugee ID Cards, It is also possible with the proof of registration (PoR) as per the Central Bank waiver. Refugees have access to micro-finance and loans from formal financial institutions and social enterprises and may also use services relating to village savings and loans, remittances and utility payments.

For instance, as at 2020, all refugees in the camps can reserve food and non-food cash allowances directly to a bank account linked to a debit multi-wallet smart card. Refugees can obtain a SIM card with their ID card and in certain situations, this is possible on the basis of a PoR.

The availability of mobile money facilities offered by various phone companies has also expanded refugees' access to wider range of digital financial services.

### **III.4. Obligations/duties of refugees and asylum seekers**

The 1951 Convention imposes a general duty to every refugee in that it provides that,

“Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order”.<sup>60</sup>

Deriving from the general duty prescribed above, an asylum seeker or a refugee depending on the country, might be required to do one or many of the following duties.

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<sup>60</sup> article 2 of the 1951 Convention relating to the Status of Refugees.



- to cooperate with the Migration Service (DGIE), providing them with detailed and correct information;
- to provide all available documents to the Migration Service;
- to come to the interview on date and time appointed by the Migration Service. In case of not coming, he/she has to introduce a reasonable excuse for absence to the Migration Service;
- to maintain domestic rules
- to pay all taxes, duties and other compulsory fees

#### **QUESTION FOR DISCUSSION:**

- What are the key laws making the Rwandan legal framework for refugee protection?
- What is the legal value of ratified international treaties related to refugee protection in Rwanda?
- To Rwandan law on refugee gives a broader definition than the 1951 Convention and OUA Convention. What does it include?
- What are the Rwandan Government obligations toward refugees?
- Discuss the Rwandan Institutional refugees' management Framework?

## **MODULE 3: REFUGEE STATUS DETERMINATION PROCEDURE**

### **I. Learning objectives**

By the end of this module, students will be able to:

- Explain refugee status eligibility and key elements of the refugee criteria;
- determine the refugee status under international and Rwandan law;
- understand the rights of asylum-seekers related to the processing of asylum-claims

- understand the different arrangements for the processing of asylum-claims (such as extraterritorial processing of asylum-claims and relocation);
- understand the rights related to the rejection of an asylum-claim, as well as return, readmission and integration measures;
- apply the content of the module to individual refugee cases.

## **II. Core messages to be delivered**

- A person is considered a refugee the moment he meets the criteria or conditions set in the refugee definition.
- The determination of the refugee status is necessary for a refugee to avail himself of the rights and protection granted to refugees in a domestic setting.
- Recognition as a refugee is very important as it will provide a person ‘international refugee protection,’ a special regime that should entitle them to certain benefits, assistance, and protection.
- the status of an individual as a refugee is determined first and foremost by the reasons and factors which led to his or her condition; exile and the breaking of the relationship that trussed him to the state of his or her nationality
- In addition to protection against *refoulement*, recognised refugees are also entitled to a number of rights and benefits.

## **III. Participants**

This module is indicated for the following key participants:

- Immigration officers: DGIE Interview/ Case Officer,
- High Court Judges,
- Lawyers,
- Refugee Status Determination Committee Members,
- MINEMA Eligibility Officers,
- MINEMA Ministerial Appeal Advisory Board Members,
- MINEMA Legal Advisor,
- Interpreters,
- Refugee Welfare Committee.

## **IV. Indicative content**

III.1. What is the nature of the Procedures relating to the determination of refugee status?

III.2. Minimum procedural guarantees

III.3. The right to privacy and Confidentiality

III.4. Burden of proof and standard of proof

III.5. What are the indicators for assessing well-foundedness of fear?

III.6. Individual Refugee Status Determination Process

III.6.1. Who conduct the determination of refugee status in Rwanda?

III.6.1. What is the process of determining the refugee status in Rwanda?

III.6.1.1. Application for refugee status

III.6.1.2. Registration of the asylum application at the immigration and emigration office

III.6.1.3. Review by the Refugee Status determination committee (RSDC)

III.6.1.3.1. How the RSDC functions?

III.6.1.3.2. RSDC Decision making

III.6.1.3.3. Appeals

III.6.2. Effects or Consequences of claim registration and appeals

III.6.3. What are the requirements for obtaining asylum in Rwanda?

III.6.4. What are the consequences of being denied refugee status?

III.6.5. How are the persons ineligible for refugee status?

III.6.6. What is meant by "prima facie" eligibility?

## **MODULE 3: REFUGEE STATUS DETERMINATION PROCEDURE**

Refugee Status Determination (RSD) is the process of inquiring as to whether an individual is eligible for protection under the 1951 UN Refugee Rights Convention.

The determination of the refugee status is necessary for a refugee to avail himself of the right and protection granted to refugees. The status of an individual as a refugee is determined first and foremost by the reasons and factors which led to his or her condition; exile and the breaking of the relationship that trussed him to the state of his or her nationality. The legal foundation for the determination of refugee status in the context of an applicable legal regime is the definition of a refugee under the same regime. Therefore, any person who is a refugee within the framework of an appropriate legal system provided he fulfills the grounds of the refugee definition in that instrument whether he is formally recognized as a refugee or not. Again, the competent authority for determining refugee status.

Refugee status determination means an examination by a government authority or UNHCR of whether an individual who has submitted an asylum application or otherwise expressed his or her need for international protection is indeed a refugee – that is, whether his or her situation meets the criteria specified in the applicable refugee definition (see below ). A person does not become a refugee by virtue of a recognition decision by the host country or UNHCR, but is recognized because he or she is a refugee. In other words, the recognition decision is declaratory: it acknowledges and formally confirms that the individual concerned is a refugee.

This Module describes the procedures you must follow to determine whether or not a person fulfils the criteria of refugee status; and the mechanisms involved in reaching a decision as to whether a person is a refugee.

### **III.1. What is the nature of the Procedures relating to the determination of refugee status?**

Procedures relating to the determination of refugee status are not specifically regulated in the international refugee instruments. There are no requirements as to whether such procedures must, by nature, be administrative or judicial, adversarial or inquisitorial. Whatever mechanism may be established for identifying a refugee, the final decision is ultimately made by the adjudicator based on an assessment of the claim put forward by the applicant in order to establish whether or not the individual has established a “well-founded fear of persecution”.

Therefore, since the Convention on refugee does not indicate what type of procedures are to be adopted for the determination of refugee status, it is left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure.<sup>61</sup>

Due to the fact that the matter is not specifically regulated by the 1951 Convention, procedures adopted by States parties to the 1951 Convention and to the 1967 Protocol vary considerably.

In Rwanda, in particular, the procedure of determination of Refugee status are both administrative and Legal and the conditions to be fulfilled and determined by the law n° 13ter/2014 of 21/05/2014 relating to refugees and the Prime Minister's Order No 112/03 of 19/06/2015 determining the organisation and functioning of the National Refugee Status determination committee and benefits granted to its members.

Before discussing the Rwandan procedure and conditions related to the determination of refugee status, it is worthy to first understand the Minimum procedural guarantees that they should fulfill or serve.

### **III.2. Minimum procedural guarantees**

Even though there is no single document to guide states while determining the refugee status of and of the unlikelihood that all States bound by the 1951 Convention and the 1967 Protocol could establish identical procedures, the Executive Committee of the High Commissioner's Programme, at its twenty-eighth session in October 1977, recommended that procedures should satisfy certain basic requirements. These basic requirements, which reflect the special situation of the applicant for refugee status, to which reference has been made above, and which would ensure that the applicant is provided with certain essential guarantees, are the following<sup>62</sup>:

- (i) The competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of *non-refoulement* and to refer such cases to a higher authority.

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<sup>61</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 42.

<sup>62</sup> Official Records of the General Assembly, Thirty second Session, Supplement No. 12 (A/32/12/Add.1), para. 53 (6) (e); see also UNHCR (n [Error! Bookmark not defined.](#)) p. 43.

- (ii) The applicant should receive the necessary guidance as to the procedure to be followed.
- (iii) There should be a clearly identified authority – wherever possible a single central authority with responsibility for examining requests for refugee status and taking a decision in the first instance.
- (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
- (v) If the applicant is recognized as a refugee, he should be informed accordingly and issued documentation certifying his refugee status.
- (vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.
- (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

### **III.3. The right to privacy and Confidentiality**

Confidentiality constitutes the guarantee for trust and for the security of the procedure. Thus, in addition to all the steps taken to safeguard it, applicants must be duly notified of the existence of this guarantee.

International human rights law guarantees everyone the right to privacy and protects individuals from arbitrary or unlawful interference.<sup>63</sup> In international law, the right to privacy is generally defined as everyone's right to know whether information concerning him/her is being processed, to obtain it in an intelligible form, without undue delay or expense, and to have appropriate rectification or erasures made in case of unlawful, unnecessary or inaccurate entries. Effective measures need to be taken to ensure that information concerning a person's private life does not reach the hands of third parties that might use such information for purposes incompatible with international human rights law.

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<sup>63</sup> See the right to privacy of the individual as enshrined in declarations and human rights treaties of relevance in Japan: Article 12 of the Universal Declaration of Human Rights of 10 December 1948, Article 17 of the International Covenant on Civil and Political Rights, Article 16 of the Convention on the Rights of the Child

General principles governing confidentiality require that the sharing of information with an external party should not jeopardize the safety of the individual concerned or lead to the violation of his or her human rights. Article 17 of the International Covenant of Civil and Political Rights (ICCPR), to which Rwanda is a Party, states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.”<sup>64</sup>

These principles governing the right to privacy are equally applicable to refugees and asylum-seekers, and other aliens, as they are to the nationals. The right to privacy and its confidentiality requirements are especially important for an asylum-seeker, whose claim inherently supposes a fear of persecution by the authorities of the country of origin and whose situation can be jeopardized if protection of information is not ensured. It would be against the spirit of the 1951 Convention to share personal data or any other information relating to asylum-seekers with the authorities of the country of origin until a final rejection of the asylum claim, once all appeal rights have been exhausted.

Therefore, bearing these concerns in mind, the State that receives and assesses an asylum request must refrain from sharing any information with the authorities of the country of origin and indeed from informing the authorities in the country of origin that a national has presented an asylum claim. This applies regardless of whether the country of origin is considered by the authorities of asylum as a “safe country of origin”, or whether the asylum claim is considered to be based on economic motives. Likewise, the authorities of the country of asylum may not weigh the risks involved in sharing of confidential information with the country of origin, and conclude that it will not result in human rights violations.

Confidentiality in asylum procedures is particularly important because of the vulnerable situation in which refugees and asylum-seekers find themselves.

“the asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request”

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<sup>64</sup> See para. 10 of the General Comment No. 16 on Article 17 of the ICCPR, Human Rights Committee, HRI/GEN/1/Rev.12 at p. 23, explaining what this means for the individual: “...In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. ...”

and highlighted that “no information on the asylum application should be shared with the country of origin”.<sup>65</sup>

Asylum-seekers provide information to the country of asylum for their own protection and because they have a duty to co-operate with the authorities and to substantiate their claim. They do so on the understanding that the information they provide will not be shared with others without their consent. The practice of disclosing confidential information to the country of origin may inhibit asylum seekers from fully explaining their cases, or even from making a claim for refugee status. Overall, it would be against the spirit of the 1951 Convention to share personal data or any other information relating to asylum-seekers with the authorities of the country of origin.

Information provided by asylum-seekers must only be used to determine eligibility for refugee status.

#### **III.4. Burden of proof and standard of proof**

While it is a general legal principle that a person making a claim bears the burden of proof, the situation of the refugee is special. In most cases it is not possible for the asylum-seeker to provide documentary or other proof, given the circumstances of his departure and the nature of the claims made. The applicant is expected to tell the truth and to provide as much information as possible, but it is up to the examiner to ascertain and evaluate the relevant facts. In many cases, even after independent research by the examiner, there will be no "proof" of the applicants' statements. If the applicant's account appears credible, give the applicant the benefit of the doubt.

In other words, given the nature of the cases involving applications for international protection, the issue of evidence needs to be analyzed from a particular angle. In examining refugee claims, the particular situation of asylum-seekers should be kept in mind and consideration given to the fact that the ultimate objective of refugee status determination is humanitarian. On this basis, the determination of refugee status does not purport to identify refugees as a matter of certainty, but as a matter of likelihood. Nonetheless, not all levels of likelihood can be sufficient

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<sup>65</sup> See “Asylum Processes (Fair and Efficient Asylum Procedures)”, Global Consultations on International Protection, EC/GC/01/12, 31 May 2001, paragraph 50 (m). The document is a collection of best state practice, including national legislation. The principles set out in this paper and recommendations therefore reflect a consensus of the law and good state practice.



to give rise to refugee status. A key question is whether the degree of likelihood which has to be shown by the applicant to qualify for refugee status has been established.

Facts in support of refugee claims are established by adducing proof or evidence of the alleged facts. Evidence may be oral or documentary. The duty to produce evidence in order affirmatively to prove such alleged facts, is termed “burden of proof”.

According to general legal principles of the law of evidence, the burden of proof lies on the person who makes the assertion. Thus, in refugee claims, it is the applicant who has the burden of establishing the veracity of his/her allegations and the accuracy of the facts on which the refugee claim is based. The burden of proof is discharged by the applicant rendering a truthful account of facts relevant to the claim so that, based on the facts, a proper decision may be reached.

Facts which need to be “proved” are those which concern the background and personal experiences of the applicant which purportedly have given rise to fear of persecution and the resultant unwillingness to avail himself/herself of the protection of the country of origin.

In refugee claims, there is no necessity for the adjudicator to have to be fully convinced of the truth of each and every factual assertion made by the applicant. The adjudicator needs to decide if, based on the evidence provided as well as the veracity of the applicant’s statements, it is reasonably likely that the claim of that applicant is credible.

Obviously, the applicant is expected to tell the truth. In saying this though, consideration should also be given to the fact that, due to the applicant’s traumatic experiences, he/she may not speak freely; or that due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them; thus he/she may be vague or inaccurate in providing detailed facts.

Therefore, the inability to remember or provide all dates or minor details, as well as minor inconsistencies, insubstantial vagueness or incorrect statements which are not material may be taken into account in the final assessment on credibility, but should not be used as decisive factors.

In assessing the overall credibility of the applicant’s claim, the adjudicator should take into account such factors as the reasonableness of the facts alleged, the overall consistency and

coherence of the applicant's story, corroborative evidence adduced by the applicant in support of his/her statements, consistency with common knowledge or generally known facts, and the known situation in the country of origin. Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.

It is important to note that where the adjudicator considers that the applicant's story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the "benefit of the doubt".

### **III.5. What are the indicators for assessing well-foundedness of fear?**

While by nature, an evaluation of risk of persecution is forward-looking and therefore inherently somewhat speculative, such an evaluation should be made based on factual considerations which take into account the personal circumstances of the applicant as well as the elements relating to the situation in the country of origin.

The applicant's personal circumstances would include his/her background, experiences, personality and any other personal factors which could expose him/her to persecution. In particular, whether the applicant has previously suffered persecution or other forms of mistreatment and the experiences of relatives and friends of the applicant as well as those persons in the same situation as the applicant are relevant factors to be taken into account.

Relevant elements concerning the situation in the country of origin would include general social and political conditions, the country's human rights situation and record; the country's legislation; the persecuting agent's policies or practices, in particular towards persons who are in a similar situation as the applicant, etc. While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor. By the same token, the fact of past persecution is not necessarily conclusive of the possibility of renewed persecution, particularly where there has been an important change in the conditions in the country of origin.

### **III.6. Individual Refugee Status Determination Process**

As discussed above, the reception and handling of refugees and asylum seekers in Rwanda is governed by the provisions of the law N° 13 ter/ 2014 of 21/05/2014 relating to refugees

(Refugee Law) and the Prime Minister's Order No 112/03 of 19/06/2015 determining the organisation and functioning of the National Refugee Status determination committee and benefits granted to its members. These laws incorporate the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol and the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa.

### **III.6.1. Who conduct the determination of refugee status in Rwanda?**

Rwanda has established a National Refugee Status determination committee (RSDC)<sup>66</sup> to deal with eligibility issues. According to the law, the RSDC brings on board members from eleven (11) entities, namely Members of the Committee shall come from the following entities:

1. Prime Minister's Office;
2. the Ministry in charge of refugees;
3. the Ministry in charge of foreign affairs;
4. the Ministry in charge of local government;
5. the Ministry in charge of justice;
6. the Ministry in charge of defence forces;
7. the Ministry in charge of natural resources;
8. the Ministry in charge of internal security;
9. the Ministry in charge of health;
10. the National Intelligence and Security Service;
11. the National Human Rights Commission.

Elected for four (4) years renewable,<sup>67</sup> the members of RSDC have the following responsibilities<sup>68</sup>:

- to consider and decide on asylum applications made by those applying for refugee status in Rwanda;
- to revoke refugee status in accordance with the provisions of this Law;
- to submit to the Minister an activity program and report each year and whenever necessary.

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<sup>66</sup> See the articles 3 and 5 of the law N° 13 ter/ 2014 of 21/05/2014 relating to refugees (Refugee Law in Rwanda) and the Prime Minister's Order No 112/03 of 19/06/2015 determining the organisation and functioning of the National Refugee Status determination committee and benefits granted to its members.

<sup>67</sup> See article 3 of the Prime Minister Order on RSDC.

<sup>68</sup> See article 4 of the Refugee Law in Rwanda

The Bureau of the Committee is composed of a President and a Vice-president elect among and by their peers; as well as a Secretary, who by the law is Director of Refugee Affairs in the Ministry in charge of refugees.<sup>69</sup>

### **III.6.1. What is the process of determining the refugee status in Rwanda?**

#### **III.6.1.1. Application for refugee status**

Procedurally, asylum seekers declare themselves at any entry point where they are required to report immediately to the local authority nearest to his/her point of entry for the protection of fundamental human rights. According to article 8 paragraph 1 of the refugee law, ‘A person who applies for refugee status must: 1° be on the Rwandan territory; 2° report immediately to the local authority nearest to his/her point of entry for the protection of fundamental human rights’.

Instead of requesting the asylum seekers to report immediately to the local authority nearest to their entry points, the Rwandan law does not specifically determine the time within which they should report.

#### **III.6.1.2. Registration of the asylum application at the immigration and emigration office**

When received by the local authority, asylum seekers are taken to immigration which starts the process. In particular, the local authority to whom the asylum seeker reports has to take him/her to the nearest immigration and emigration office within twelve (12) hours and that office has to register the asylum seeker within twenty-four (24) hours from his/her arrival.

Each asylum seeker’s application is lodged with the department in charge of immigration and emigration which issues the asylum seeker a temporary residence permit after reviewing his/her case.

In practice, once the applicant arrives at immigration, the immigration officers do preliminary interviews. Then they are registered and get a temporary resident permit of three (3) months.

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<sup>69</sup> Ibid, articles 4 and 5.

The preliminary interview consists of registering basic information and issuing the temporary residence permit so the applicant can stay legally. That is then passed on to DGIE and they can do a subsequent interview.

In registering the applicant's claim, the DGIE agent conducts a basic interview and questions are basically about the applicant life in his/her home country. Example questions are:

- Why did you come?
- Why did you leave?
- Where is your family?
- How did you arrive in Israel and why didn't you stay in Egypt?
- What will happen to you if you are forced to go back?

### **III.6.1.3. Review by the Refugee Status determination committee (RSDC)**

The department in charge of immigration and emigration has to submit the file of the refugee status applicant to the RSDC within fifteen (15) days. The RSDC has to consider, analyse and decide thereon within forty-five (45) days.

- ***III.6.1.3.1. How the RSDC functions?***

The process begins at the airport/border (first dealing with immigration.) which is entry clearance and preliminary processing. The DGIE receives file and provides a preliminary analysis of the application. (This is not a decision on refugee status, and does not recommend a particular decision on refugee status.) After its preliminary analysis, the DGIE submits the application to RSDC.

Once files are received, the MINEMA Eligibility and Protection Office ensures all information is received. If something is missing, further information can be requested to be submitted by the applicant. The RSDC can request to meet the applicant to verify and ask for further information (in a 20-40 min interview).

Thereafter, a meeting with RSDC is organised within 2-3 weeks of receipt of the application to decide the claim.

Where the RSDC is considering refusing an applicant's refugee status, an interview must take place. This may be carried out by the RSDC secretariat on behalf of the Committee before referring to the RSDC for a status determination decision.

- *III.6.1.3.2. RSDC Decision making process*

The law dictates that the RSDC must meet twice a quarter<sup>70</sup> but there is a provision to meet on a weekly basis when there are many cases. If cases are similar, they can be grouped together. This is the case, when, for instance, applicants are from the same country or have similar claim types. This makes it easier to make decisions. However, each claim will be decided on an individual case-by-case basis.

The meetings of the Committee are convened and chaired by its President or Vice president in case of absence of the President. In case the President and the Vice president are absent, the meetings of the Committee are convened at the request of one third (1/3) of its members. In such case, the meeting are convened by the Secretary and chaired by the most senior member.<sup>71</sup>

The meeting is held if two thirds (2/3) of its members are present. However, If the committee fails to hold its meeting due to lack of required quorum, the meeting is reconvened within fifteen days (15) and the meeting is held regardless of the number of members present.<sup>72</sup>

RSDC's Decisions are often taken by consensus. If necessary, RSDC can move to vote but this happens in only a few cases, the majority [of the time] members of RSDC are able to form a consensus. Article 8 paragraph 1 of the Prime minister's order no 112/03 of 19/06/2015 stipulates that 'Decisions of the Committee shall be made by consensus. If the consensus is not reached, decisions are made by two-thirds (2/3) of the majority of the members present at the meeting'.

It is important to note that when necessary other individuals or institutions can be invited to the RSDC meeting to advise/provide info (e.g.: UNHC). When invited, they do not take part to vote/make a decision but can attend in an advisory capacity.<sup>73</sup> For example, on a country where there is not much information or the decision is more difficult, they can link RSDC members with Government of Rwanda officers in that country to obtain general country information to assist the decision-making process. Under no circumstances and at no stage will the authorities in the applicant's country of origin be contacted.

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<sup>70</sup> See article 7 para. 1 of the Prime minister's order no 112/03 of 19/06/2015.

<sup>71</sup> Ibid., article 7 para. 2.

<sup>72</sup> Ibid., article 7 para. 3.

<sup>73</sup> Ibid., article 7 para. 4.

The RSDC considers and analyses the application for refugee status and decides thereon within forty-five (45) days. In its decision about the refugee status of the applicant, RSDC has the legal obligation to provide the reasons for granting or refusing to grant refugee status.<sup>74</sup> Such written decision should be notified to the refugee status applicant by the Chairperson of the RSDC within ten (10) days from the date the decision is made.<sup>75</sup>

It is important to note that, depending on the case, a claimant may be called by RSDC for an additional interview. A decision can also be taken based on the available information.

- *III.6.1.3.3. Appeals*

When rejected, the applicant asylum seeker can make an appeal to the Minister in charge of Emergency Management. The asylum seeker whose refugee status application is rejected by RSDC has the right to appeal to the Minister of Disaster Management and Refugee Affairs within a period of thirty (30) days from the date he/she was notified of the decision. The Minister to whom the appeal is made decides thereon within one (1) month and during the appeal period until the decision of the Minister of Disaster Management and Refugee Affairs, the asylum seeker continues to have the right to stay in Rwanda.

‘If a person applying for refugee status is not satisfied with the decision of the Refugee Status Determination Committee, he/she may appeal to the Minister within a period of thirty (30) days from the date he/she was notified of the decision. The Minister to whom the appeal is made shall decide thereon within one (1) month.’<sup>76</sup>

In practice, the appellate submits a letter appealing the RSDC decision. In this case, the Minister assigns a special team to assess the decision taken by RSDC for confirmation or revocation. The team is made of individuals from the departments of the Ministry of Foreign affairs or the PM’s ministry legal department, not those part of the RSDC. The minister gathers a team with the capacity and experience to consider and analyse the case.

When an asylum seeker is granted refugee status, a refugee identity card is issued not only to him/her but also to his/her spouse, children under the age of eighteen (18) years and persons under his/her dependence.

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<sup>74</sup> See article 9 of the law on refugees

<sup>75</sup> Ibid., article 10.

<sup>76</sup> Ibid., article 11.

Nevertheless, when the refugee status is not granted, the asylum seeker has a second level appeal option to submit the case to the High Court. According to law, the court having jurisdiction to adjudicate relating to the applications for asylum is the High Court.

### **III.6.2. Effects or Consequences of claim registration and appeals**

As mentioned above, upon registration with the department in charge of immigration and emigration, a temporary residence permit of three (3) months is issued to an asylum seeker.

During the appeals periods until the decision of the Minister of Disaster Management and Refugee Affairs or of the High Court, the asylum seeker continues to have the right to stay in Rwanda.<sup>77</sup>

### **III.6.3. What are the requirements for obtaining asylum in Rwanda?**

The requirement for obtaining asylum in Rwanda are provided in article 7 of the law on refugees. According to this article,

A person shall be eligible for asylum, if:

1° having a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion different from the political line of the country of his/her nationality and owing to such fear, he/she is unable to avail himself/herself of the protection of that country;

2° owing to an external aggression, occupation, foreign domination or events seriously disturbing public order in either part or in the whole of his/her country of origin or nationality, he/she was compelled to leave his/her place of habitual residence in order to seek refuge in another place outside his/her country of origin or nationality.

### **III.6.4. What are the consequences of being denied refugee status?**

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<sup>77</sup> See *ibid.*, article 11.



An asylum seeker whose refugee status is definitively denied, he/she has to be referred to the department in charge of immigration and emigration (DGIE) within thirty (30) days from the date of notification of refugee status rejection for consideration of other immigration status or to facilitate where an individual wishes to leave Rwanda. In such circumstances, legal provisions governing immigration and emigration shall apply. This period may be renewed only once (1) when there are valid reasons.<sup>78</sup>

### **III.6.5. Who are the persons ineligible for refugee status?**

As provided by the law, no person is eligible for refugee status if there is strong evidence indicating that:<sup>79</sup>

1° he/she has committed a crime against peace, war crime, crime of genocide and other crimes against humanity as defined by international conventions ratified by Rwanda;

2° he/she has committed acts contrary to the main purposes and principles of the United Nations and of the African Union;

3° he/she is prosecuted for any felony other than a political crime before he/she takes refuge in Rwanda.

### **III.6.6. What is meant by "prima facie" eligibility?**

"Prima facie" eligibility - in other words, eligibility based on first impressions - is applied in the case of group movements, when the determination of eligibility on an individual basis would not be practicable for obvious reasons.

Refugees in mass influx situations, such as humanitarian emergencies, are unconditionally granted *prima facie* refugee status by the Minister in charge of Emergency Management (MINEMA). However, this does not exclude or prevent the RSDC from analyzing individual applications where necessary.<sup>80</sup>

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<sup>78</sup> See *ibid.*, article 15.

<sup>79</sup> See *ibid.*, article 14.

<sup>80</sup> *Ibid.*, article 13.

It is important to note that when it appears that refugees having fled in mass influx situations include former soldiers or former members of armed groups, relevant organs are required to do the following:

- 1° to separate civilians from soldiers and other armed elements;
- 2° to take weapons and other military equipment away from those in possession thereof;
- 3° to transfer former armed elements to a specific guarded settlement and record their identification;
- 4° to ask formerly armed elements to withdraw from military activities.<sup>81</sup>

Those who appear to have withdrawn from any military activities or any activities of armed groups shall fall under the category of those eligible to apply for refugee status.

#### **QUESTIONS FOR DISCUSSION:**

- The Procedures relating to the determination of refugee status in Rwanda is both administrative and judicial in nature? Explain.
- Who is Eligible to Go Through the RSD Process?
- What is the Refugee Status Determination Process?
- In emergency situations, in which individual screening is not feasible, a group approach may be adopted. What is the name given to this determination procedure?
- What are the consequences of being denied refugee status?
- What are the Minimum procedural guarantees enjoyed by an asylum seeker during the RSD Process?

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<sup>81</sup> Ibid.

# MODULE 4. INTERVIEWING APPLICANTS FOR REFUGEE STATUS

## **I. Learning objectives**

By the end of this module, students will be able to:

- Conduct an interview with asylum seekers in a professional manner;
- Distinguish an interview with asylum seekers from a trial hearing;
- Understand the stages of an interview;
- Understand the purpose of the interview;
- Explain the responsibilities and roles of all parties involved in the interview;
- Explain confidentiality provisions that apply to the interview and adjudication.
- Advise the interviewee of post-interview procedures and what to expect next in the process.

## **I. Core messages to be delivered**

- It is important to recall that the interview is not a trial. It is an opportunity to discuss and present all the facts and events which form the basis of an applicant's claim to refugee status.
- Preparing for the interview is a crucial part of the determination of refugee status process,
- It is important to brief the interpreter in advance of the interview to make sure that he or she understands what to do.
- Confidentiality is an essential condition.

## **II. Participants**

This module is indicated for the following key participants:

- Immigration officers: DGIE Interview/ Case Officer,

- High Court Judges,
- Lawyers,
- Refugee Status Determination Committee Members,
- MINEMA Eligibility Officers,
- MINEMA Ministerial Appeal Advisory Board Members,
- MINEMA Legal Advisor,
- Interpreters,
- Refugee Welfare Committee.

#### **IV. Indicative content**

##### IV.1. Preparing for an interview

###### IV.1.1. Identifying sources of information

###### IV.1.2. Knowing the content of the application

###### IV.1.3. Preparing the interpreter

###### IV.1.3. The importance of the physical setting and your attitude

###### IV.1.3.1. Privacy

###### IV.1.3.2. No interruptions

###### IV.1.3.3. Seating arrangements and the interview room

###### IV.1.4. Planning your time

###### IV.1.5. Recalling the objectives

##### IV.2. Conducting the Interview

###### IV.2.1. Opening the interview

###### IV.2.2. Maintaining the applicant's confidence

###### IV.2.3. Putting your questions

IV.2.3.1. Your reaction to silences

IV.2.3.2. Types of questions

IV.2.3.2.1. Open questions

IV.2.3.2.2. Closed questions

IV.2.4. Closing the interview

## **MODULE 4. INTERVIEWING APPLICANTS FOR REFUGEE STATUS**

Interviewing is a task that is an integral part of many functions performed by staff concerned with protecting and assisting refugees. These functions may include providing counselling, seeking durable solutions, or documenting human rights violations. Interviewing is particularly important within the context of determining refugee status. To do it well requires certain skills that can be developed and improved. The essential purpose of this module is to help you develop your skills in this regard.

We should never forget that being recognized – or not – as a refugee will have direct implications on the life and well-being of the applicant and his or her family. This places a heavy burden of responsibility on the person conducting the interview whether or not this person is the final decision-maker.

### **IV.1. Preparing for an interview**

Preparing for the interview is a crucial part of the process. An interviewer who is well-informed and well-prepared will be in a position to establish a relationship with the applicant which provides an atmosphere of confidence and trust. Proper preparation and information will allow an interviewer to ask the right questions, deal with any difficulties which may arise during the course of the interview, and ultimately make a fair assessment of the applicant's credibility.

Knowing the applicable refugee definition, though essential, is not enough. Numerous other sources of information must be assembled. These will, of course, vary according to the location and circumstances in which the interview takes place. What follows are a number of suggestions that can be used as a checklist.

- What other international legal instruments may apply (international human rights and humanitarian law)?
- What do you know of the country of origin of the applicant?
- What national legislation is of relevance (Immigration Acts, Aliens Acts, nationality laws, laws relating to extradition, or domestic human rights legislation)?
- What is the relevant jurisprudence?

#### **IV.1.1. Identifying sources of information**

It should be emphasized that knowledge of the country of origin of the applicant is crucial for preparing for the interview. You must become familiar with basic facts about the country from which the claimant has come. The information you gather should include the following:

- the basic political and administrative organization of the country of origin. For example, does the country have an elected government, political parties, an independent legal system, a civilian police force, autonomous or semi-autonomous local or regional governments, restrictions on freedom of movement, etc.?
- respect for and adherence to fundamental human rights in the country of origin, and any reports of harassment or persecution of any individual or groups of individuals on grounds related to the definition of a refugee;
- the basic geography (maps) of the country of origin, and the economic and social characteristics of the country including: the major population centres, distances between cities, ethnic or tribal groups, the main sources of employment, the system for the distribution of goods, economic or population dislocations affecting particular groups or areas, and so on;
- the culture of the country with respect to such issues as the definition of family and the nature of family relationships, the role and status of women, attitudes towards homosexual relationships, attitudes towards “foreign” influences, etc.;

In addition, you may have to seek or collect more detailed information concerning such matters as: the operational methods of the police, military or security services, the criminal and military justice systems, and terms of punishment for criminal, military or political offences.

As noted above, the type of information to be collected should not be limited to legal materials. Human rights reports, general country of origin information, specialized reports concerning ethnic, religious, gender issues or political groups, and news reports of current events are just

some of the sources which can be employed for reference purposes. Uncovering this information will require investigation and understanding. Here again are a few suggestions that include support you can obtain from UNHCR Headquarters and credible sources of information that you will need to assemble locally, such as country information reports published by other countries and available freely online.

#### **IV.1.2. Knowing the content of the application**

Even if you are working under time constraints, be sure to read the basic data and registration forms and other relevant testimonies and translate and examine copies of all documents received from the applicant in advance of the interview. This will help you:

- to ask the right questions and identify what information may be missing, incomplete, contradictory or unclear;
- to inspire confidence in the applicant. An interviewer who fumbles in his or her papers, uncertain as to the applicant's correct name and personal history will be viewed with suspicion. This can be an obstacle to obtaining an honest account of the claim on which the outcome of the application will depend.

#### **IV.1.3. Preparing the interpreter**

In many cases, the interview will take place with the assistance of an interpreter. This may constitute an additional obstacle to communication. It is important to brief the interpreter in advance of the interview to make sure that he or she understands what to do. You should explain how you intend to conduct the interview and what types of questions you will ask the applicant. Some explanations on the refugee determination process and common terminology may also be helpful. In all cases you should provide guidance as to the code of ethics expected of the interpreter. It is particularly important to insist on the **confidentiality** of all information that concerns the applicant. You should also ensure that the interpreter understands that he or she must remain neutral and objective during the interview process.

Interpreters should understand that everything the interviewer and applicant say must be interpreted. It is not sufficient to summarize or embellish what is being said through filling in missing information. Nor should the interpreter try to improve on the words or phrases of the applicant in order to make him or her sound more coherent, credible or educated. The

interpreter should be trained to take notes during the interview in order to ensure the accuracy of what is being translated, and to record all the facts clearly. Any names of persons or places must be spelled out so they are clear. The interpreter should also be told that the interviewer or applicant may ask for clarification whenever necessary.

If you are not satisfied with the interpreting arrangement, then the interview should not proceed. For example, such a situation may arise if the applicant does not fully understand the interpreter due to differences of dialect. Similarly, in a situation where refugee interpreters are employed, an interpreter should not be engaged if he or she is closely related to the applicant through family ties or other connections such as political party affiliation. It is important to recall that the relation between the applicant and the interpreter will have an impact on their ability and willingness to communicate. You should therefore make sure that the applicant and the interpreter feel comfortable with one another. This is important not only to preserve the objectivity of the interview process, but to prevent against the interpreter being placed in a position where he or she can be pressured by the applicant.

#### **IV.1.3. The importance of the physical setting and your attitude**

In preparation for an interview, you should assume a caring attitude and provide a setting that encourages the applicant to communicate. Try to provide a comfortable physical environment for the interview, and establish a good impression by greeting the applicant and addressing him or her throughout the interview in a respectful and attentive manner. Be aware of your posture and body language.

Also, be attentive to how you dress. If you dress in a formal manner this may intimidate the applicant and make him or her feel uneasy and unwilling to communicate. You should dress in an appropriate and culturally sensitive manner as this will show that you respect the applicant and it will reflect positively on your attitude.

Interviews should be reassuring and encourage the applicant to answer your questions fully and truthfully. You may not have a choice as regards the location of the interview. However, give careful attention to the following details as they will influence the general atmosphere of the process.

##### **IV.1.3.1. Privacy**



As discussed in previous modules, confidentiality is an essential condition. Testimonies may cover information which the applicant has not even revealed to his or her spouse or family. Communication cannot be established if there exists a fear of being overheard by others. It is therefore most important to ensure that the interview area is completely private.

Where private reception facilities are available, they should be used to conduct interviews. Ensuring a private setting, especially in the field, may not always be possible. Difficult circumstances such as hot, noisy, crowded or stressful settings are clearly more difficult for interpreters, refugees and interviewers. If such a setting cannot be avoided then this should be explained to the refugee and the interpreter. You should also try to remedy the worst conditions by, for example, bringing drinking water or other refreshments and ensuring there is a place to sit.

#### **IV.1.3.2. No interruptions**

Make sure that there are no distractions while the interview is taking place. Telephone calls or interruptions by other people should be avoided. You should place a notice at the entrance to the interview room which indicates that you are not to be disturbed during the interview.

Any distracting noises will interfere with the concentration of the applicant, the interpreter, and the interviewer.

#### **IV.1.3.3. Seating arrangements and the interview room**

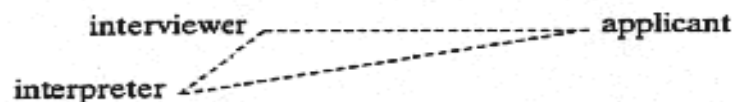
Arrange the table and chairs on the same level and, if possible, in a well-lit area. Avoid signs of authority in the interview room and surrounding environment. (e.g. court-room settings, bars on windows, locked doors, the presence of uniformed personnel, etc.). Also, avoid seating the applicant in such a way that he or she is facing a source of light as this may tend to “blind” the applicant.

### ***Where you should sit***

The place which the interviewer and interpreter occupy in relation to the applicant is an important detail.

You should try to arrange the seating so that the interpreter is to the side of the interviewer and slightly withdrawn. This will allow the interviewer and applicant to communicate face to face.

The preferred position is illustrated in the sketch below.



In the event you are interviewing a child, the interpreter should sit closer to the child than to the interviewer in order to avoid being perceived in a position of authority and to put the applicant at ease.

#### **IV.1.4. Planning your time**

Interviewers should manage their time effectively. This is another reason why careful preparation is important. Begin by assessing the main aspects of the case, then plan your interview in such a way as to concentrate on the areas where there are omissions or contradictions. Try to anticipate where tact and special interviewing skills may be needed to help overcome communication barriers.

Sketch out a schedule that allows time for breaks if the interview is going to be long. Never forget that interviewing is an emotionally draining and intense exercise for all parties to the process. In particular, it is necessary to provide breaks for the interpreter and the applicant. You as interviewer must also take regular breaks in order to perform most effectively. When resuming the interview after a break, you may wish to check that the applicant has a) understood all the questions so far, and b) is feeling fit and well enough to continue the interview, having regard to the applicant's wellbeing. You should plan time for the possible intervention, where appropriate and conducive to the wellbeing of the applicant, of additional persons to be interviewed, for example, family members of the applicant (spouses, children) or other witnesses such as medical professionals (in the case of torture victims or persons with disabilities). Before starting the interview it is necessary to remind the applicant of the procedures and schedule to be followed. If the interview will last a considerable length of time,

keep in mind that as a general rule you should provide a 5 to 10 minute break for every 1 to 1.5 hours of interviewing.

#### **IV.1.5. Recalling the objectives**

As a final step in your preparations, it is important to be clear in your approach and to remind yourself of the importance of the interview process for the applicant's future and that of his or her family.

In this regard, *it is important to recall that the interview is not a trial.*

It is an opportunity to discuss and present all the facts and events which form the basis of an applicant's claim to refugee status.

**To summarize, the objectives of the interview process are as follows:**

- You must document with as many details as possible the applicant's story, including both the objective and subjective elements. You must allow the applicant to tell his or her story fully, and you must direct the interview by planning your questions carefully in order to cover all aspects of the claim.
- As an essential part of the decision-making process you must assess the applicant's story and credibility in connection with the principles and criteria for determination of refugee status. This requires that the applicant's story be carefully documented and cross-checked.

## **IV.2. Conducting the Interview**

As we have seen in the previous chapter, the purpose of the interview is to uncover the facts and to provide a picture of events that is as complete and objective as possible. As an interviewer, there are two pitfalls to avoid:

- appearing judgmental or aloof;
- being overly sympathetic.

### **IV.2.1. Opening the interview**

The way you open the interview will set the tone for the rest of the proceedings. The message you must convey to the applicant from the outset is that:

- you are there to hear his or her story in a totally neutral way;
- as a representative of your organization you are concerned and respectful of his or her distress;  
but
- you work within a legal framework which imposes certain specific conditions when it comes to eligibility for refugee status.

### **Step 1: Putting the applicant at ease**

Take care to show courtesy and respect by:

- smiling and shaking hands (or some other appropriate gesture of greeting);
- using the applicant's family name (having already made sure that you know how to pronounce it correctly);
- introducing yourself;
- if the interview is not on time, apologize for the delay;
- asking if the applicant is prepared to be interviewed.

### **Step 2: Introducing the interpreter**

Having introduced the interpreter and having explained his or her role, you should check that the applicant and the interpreter understand one another. To do this invite the applicant to talk informally for a few moments with the interpreter, then ask if he or she is satisfied that they understand each other. In the case of women applicants, every effort should be made to use a female interpreter and interviewer. This is especially important for claims which may involve aspects of sexual violence.

### **Step 3: Reviewing basic personal information**

You should already have read the applicant's basic data or registration form. However, you may find it necessary to go over certain points to make sure that the information you have is accurate and complete.

### **Step 4: Providing some background explanations**

Before commencing the interview the applicant must be provided with certain information. This can be done by giving written information to the applicant during an earlier contact with your office, or by providing it orally before starting the interview.

In either case, the following information should be explained to the applicant:

- the applicable refugee definition;
- the procedures followed with respect to the determination of refugee status.

It is particularly important for the applicant to understand that the **following questions** must be established:

- Does the applicant fear persecution?
- Is this fear well-founded?
- Is the persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or for reasons defined in the OAU Convention or Cartagena Declaration definition of a “refugee”?

This is why many of the questions that will be asked during the interview will concern:

- the conditions that exist in the country of origin, and more especially in the region where the applicant comes from; what kind of difficulties the applicant, members of his or her family, or similarly situated persons have experienced in the past;
- what difficulties might be expected if he or she were to return to that country;
- why these difficulties will arise.

Before proceeding, make sure that the applicant has understood the purpose of the interview, and of the questions you will be asking.

### **Step 5: Reminding the applicant of his or her rights and obligations**

Having by now explained your role as interviewer, it is important to outline the applicant’s own rights and obligations. These mainly include:

- The right to **confidentiality**. Reassure the applicant that none of the information he or she will reveal to you will be shared with the authorities of the country of origin, or with any other third party without the applicant’s express consent. You should reassure the applicant that both you and the interpreter will respect the confidentiality of the

interview and are under oath to do so. This reassurance is indispensable in order that the applicant may feel that it is safe to talk openly about past experiences and events.

- The right to counsel. Where national legislation provides for the participation of legal or other counsel to assist an applicant in presenting his or her claim, it is essential to allow such counsel to participate in the interview. The presence of a legal representative or other counsel who is familiar with the refugee criteria and local jurisprudence and the applicant's claim, is helpful not only to the applicant but also to the interviewer.
- The right and obligation to give evidence. The granting of refugee status depends upon the facts provided by the applicant. Only he or she can provide these facts. As an interviewer you have a vital role to play in helping and encouraging the applicant to bring to light the relevant details of his or her past experience and to present them convincingly. In order to substantiate the claim, and thereby assist the applicant, the interviewer may need to obtain supporting documentation such as newspaper articles, witness accounts or human rights reports. It is the duty of the interviewer to assist the applicant by drawing his or her attention to the importance of providing all available evidence in support of his or her claim to refugee status. However, the interview is for the applicant. Although the person conducting the interview should be in control, you should recall that the interview process is an opportunity for the applicant to present his or her claim.
- The obligation to be truthful. Tell the applicant that giving an honest, open testimony is in his or her best interest. The applicant may have been told by others that the chances for recognition are greater if the story is told in a certain way. As an interviewer, you must be aware of such realities. It is your job to impress upon the applicant that the case must be based on true experiences and not on false information.

### **Step 6: Explaining the process**

Tell the applicant how long you expect the interview to last, whether you plan any breaks, and how the questions will be asked. Having explained the preceding steps 1 through 5, you should ask the applicant whether anything remains unclear and requires further explanation. Once everything has been well understood the interview can proceed.

### **IV.2.2. Maintaining the applicant's confidence**

The purpose of the various steps suggested above has been to establish a degree of confidence on the part of the applicant. Your task throughout the interview will be to build on this confidence, remaining vigilant for any signs of incomprehension or tension that may arise and seeking to dispel them at once.

Two approaches can help achieve this:

- ***Eye contact***

With the exception of certain cultures, where eye contact can have another significance, maintaining a steady and friendly visual expression and keeping eye contact with the applicant suggests that you are paying careful attention to what is being said. Avoid reading papers while the applicant is speaking. If you need to check on a document, wait until there is a pause.

Eye contact should be with the applicant, not with the interpreter. Ask your questions directly to the asylum-seeker and not “through” the interpreter.

- ***Body posture***

Like eye contact, the physical position you adopt can communicate your interest in what the applicant is saying. Be natural, attentive and relaxed. Keep your movements and facial expressions as neutral as possible. This will encourage the applicant to communicate.

### **IV.2.3. Putting your questions**

Put your questions in a friendly manner and not too quickly. Allow the asylum-seeker adequate time to present his or her story as freely as possible. Although you may have a large number of cases to review, avoid pushing an applicant to come more quickly to the main point of the testimony as he or she may be about to reveal an important and relevant detail. Questions should lead on naturally rather than be drawn from a list you have prepared in advance. If you are using an interview questionnaire or question checklist it will alert you to the essential elements which should be covered during the interview. However, do not confine yourself to a pre-set format or list of questions as this will unduly restrict the flow and scope of the interview.

Everyone has a way of speaking which varies according to such factors as speed, tone and rhythm. In order to put the applicant more at ease, and thereby encourage him or her to communicate, you should try to modulate your voice and pace your questions to suit the particular characteristics of the applicant.

Throughout the interview you should be prepared to follow-up with questions on all relevant issues which are raised by the applicant. No reply or issue should be left in doubt when you finish the interview. This requires that you remain alert and intellectually active during the interview process.

**Example:**

A claimant has testified that she was arrested while attempting to distribute leaflets and was detained for three months. In order to clarify this statement, you could follow-up with questions such as:

- “Why were you detained?”
- “How were you treated while in detention?”
- “Were you ever charged with an offence?”
- “Did you have any contact with your family while in detention?”
- “Can you describe the place where you were being detained?”

Following up with these questions will provide an opportunity to obtain additional relevant information from the applicant. Such questions will also show that you are concerned and interested in learning about what happened.

**IV.2.3.1. Your reaction to silences**

Allow the applicant time to think, especially after a general or open question (see below). Avoid the temptation to break the silence by adding a restricted question which may elicit a quick response, but may also prevent the applicant from revealing the full importance a specific event had for him or her.

**Example:**

**Interviewer:** “What happened to you after the military seized power?”

Silence

**Interviewer:** “Were you ever interrogated or arrested?”

A preferable approach, if the silence is too long, is to re-formulate the general question.



### **Taking the same example:**

**Interviewer:** “What happened to you after the military seized power?”

Silence

**Interviewer:** “You mentioned earlier that your troubles began when the military overthrew the government. Could you tell me about some of the difficulties you experienced?”

Silence from the interviewer (provided it suggests that he or she is interested and awaiting the rest of the story) may encourage the applicant to talk. It gives time to consider a question carefully and can help the applicant recall past events. Considerable non-verbal communication also occurs during such pauses; to which you must be attentive.

#### **IV.2.3.2. Types of questions**

As an interviewer you need to understand which types of questions will be most effective at each stage of the interview, as well as those which should be avoided as potential barriers to communication. This knowledge will also help you overcome problems of hesitation or reluctance. In the following, two types of questions will be described: *open questions* and *closed questions*.

##### **IV.2.3.2.1. Open questions**

An open question is one that asks for general information and cannot be answered by “yes” or “no”. It is used to gather information on personal opinions and reactions, and is therefore most appropriate at the beginning of an interview. By using open questions, the interviewer provides the applicant the opportunity to relate events in his or her own way.

#### **Examples:**

- What made you decide to leave your country?
- How did your life change after the war?
- Please describe any difficulties you have had with the authorities in your country?
- What happened when the Government changed?

- What reasons do you have to believe that you may have difficulties if you are sent back to your country?
- How were you treated in prison? What did the prison authorities do to you?

Open questions can help give the interviewer a greater understanding of the background to the applicant's problems and unwillingness to return to his or her country of origin. Open questions are also used to encourage the applicant to talk more openly on an important topic.

**Example:**

*Applicant:* I didn't want to get into trouble with the authorities so I stopped going to the meetings. But it made no difference. I know they were still going to get me.

*Interviewer:* Could you help me understand why you felt that way?

This type of question is likely to elicit more important information.

**When to avoid open questions**

Open questions can give the interviewee the opportunity to explain a situation in detail and provide further information, however if the applicant is nervous, emotionally upset, or has misunderstood the type of information you are seeking he or she may become confused and talk at length about irrelevant details. If this occurs the interviewer must gain control of the interview by politely intervening and changing the line of questioning. When asking open questions you must also take into account the education level and cultural background of the applicant in order to assess whether he or she is capable of providing clear and relevant information in response to your questions.

**IV.2.3.2.2. Closed questions**

A closed question calls for a short response, usually "yes", "no", or a simple statement of fact.

**Examples:**

- When did you leave your country and when did you arrive here?
- Who paid for your voyage?
- Did you have a visa to enter this country?
- What route did you take to get here?

- Did you apply for refugee status in any other country?

Closed questions serve **to fill in information that is not clear from the applicant's story**, particularly when there are **contradictory details**.

### **Examples:**

- While you were in detention were you interrogated? By whom? How often? How long did the sessions last? What questions were you asked?
- Where were you detained? Were you alone in the cell?
- You said that you hid with your brother but on your basic data form you have indicated that your only brother lives abroad. How many brothers do you have?

**Here now are a few general hints** on formulating questions. They are expressed in the following “do’s” and “dont’s”:

**DO** Keep your questions short and uncomplicated.

Alternate between open and closed questions. This will help to reduce tension as the applicant will be able to express him or herself more freely during the interview. It will also help avoid making the applicant feel that you are deliberately pursuing confusing or contradictory points.

**DON'T** Ask a string of questions that will leave the applicant feeling confused.

**DON'T** Interrogate as in a cross-examination, or use a harsh tone of voice when asking your questions.

### **An example of what you should avoid doing is as follows:**

When you applied for your visa, you said you had a good job and could only take a two-week holiday. At the airport, you said you had no relatives in this country but your brother is also a refugee applicant, isn't he? Now you tell me you will be persecuted if you are sent back home. You lied to get your visa and you lied at the airport. Why should I believe you now?

#### **IV.2.4. Closing the interview**

When it comes to closing the interview this brief checklist can help tie up loose ends:

- Have you asked the applicant if he or she has anything to add?

- Have you advised the applicant of what will happen following the interview?
- It is important to be as specific as you can concerning:
  - o when the decision can be expected;
  - o what will happen if the application is successful (concerning documentation, family reunification, the right to work, etc.);
  - o what will happen if the response is negative (explain the right and procedure to appeal).
- Have you reassured the applicant that, whatever the circumstances of the case, you will include all the relevant information in the interview report that will accompany the request for recognition of refugee status?
- Have you thanked the interpreter and given the applicant the opportunity to do likewise?

#### **QUESTIONS FOR DISCUSSION:**

- Why Preparing for an interview is important?
- Why is it important to seek or collect more detailed information about the home country of the applicant?
- What kind of information do you need before conducting an interview with an asylum seeker?
- Why the interpreter should be prepared and briefed before conducting an interview?
- What types of questions are appropriate in an interview with an applicant?
- Explain of the stages of conducting an interview with an applicant.

# MODULE 5. DEALING WITH SPECIAL CATEGORIES OF REFUGEES: MINORS, WOMEN AND GIRLS

## I. Learning objectives

At the end of the module, participants will be able to:

- Determine who qualifies as an unaccompanied asylum-seeking minor;
- Understand the special protection and treatment granted to special categories of refugees and asylum seekers;
- Understand the needs of an unaccompanied asylum-seeking minor;
- Understand how the State addresses the situation of special categories of refugees and asylum seekers

## II. Core messages to be delivered

- Children should always have access to asylum procedures, regardless of their age.
- Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection.
- All unaccompanied children have the right to be represented by a guardian as soon as they have lodged an asylum claim. The legal counsel should be appointed promptly.
- An unaccompanied child is a person who is under the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier and who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.
- The fundamental principles that uphold the protection of children are the best interest of the child and the benefit of the doubt.

- Considering their vulnerability and special needs, it is essential those children's refugee status applications be given priority and that every effort be made to reach a decision promptly and fairly.

### **III. Participants**

- Immigration officers: DGIE Interview/ Case Officer,
- High Court Judges,
- Lawyers,
- Refugee Status Determination Committee Members,
- MINEMA Eligibility Officers,
- MINEMA Ministerial Appeal Advisory Board Members,
- MINEMA Legal Advisor,
- Interpreters,
- Refugee Welfare Committee.

### **IV. Indicative content**

V.1. Understanding the special categories of refugees and asylum seekers

V.1.Minors

-V.1.2.Women and Girls

-Victims of human trafficking

IV.2.Legal protection as per their special status

## **Module 5. Dealing with special categories of refugees: minors, women and girls**

**V.1. Understanding the special categories of refugees and asylum seekers**

**V.1.1. Minors**

As a general rule, ‘minors who are asylum-seekers should not be detained.’<sup>82</sup> and many states accept that unaccompanied or separated children should never be detained<sup>83</sup> while others recognize that detention should only be resorted to in exceptional circumstances.<sup>84</sup> The CRC Committee has noted that detention cannot be justified just because the child is unaccompanied or separated, or on the basis of his or her migration or residence status.<sup>85</sup> Such children should instead be housed in residential homes for children or foster care while longer-term solutions are considered.<sup>86</sup>

However, in the exceptional case where an asylum-seeking, refugee or stateless child is detained, he or she shall have the right to prompt access to legal and other appropriate assistance, as well as to challenge the legality of his or her detention before a court or other competent, independent and impartial authority, and to a prompt decision<sup>87</sup>

Even though there is no special provision in the 1951 Convention regarding the refugee status of persons under age. The same definition of a refugee applies to all individuals, regardless of their age and status. When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying the criteria of “well-founded fear” in his case. If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minor’s own refugee status will be determined according to the principle of family unity.<sup>88</sup> The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enroll the services of experts conversant with child mentality<sup>89</sup>. This requires that all possible alternatives, including unconditional release, need to be considered prior to detention<sup>90</sup>

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<sup>82</sup> Guideline 6, UNHCR, *Guidelines on Detention*.

<sup>83</sup> UN High Commissioner for Refugees (UNHCR), *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, April 2011, PPLA/2011/01.Rev.1, available at: <https://www.refworld.org/docid/4dc935fd2.html>. p 46.

<sup>84</sup> UNHCR (n 83) p. 46.

<sup>85</sup> CRC Committee, General Comment No. 6 (2005), *The Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, UN Doc. CRC/GC/2005/6, 1 September 2005, para. 61.

<sup>86</sup> UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, Geneva, 1997, p. 7; UNHCR, *Guidelines on Detention*, Guideline 6.

<sup>87</sup> Article 25, CRC.

<sup>88</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 46.

<sup>89</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 46.

<sup>90</sup> *Bakhtiyari v. Australia*, HRC Comm. No. 1069/2002, 6 November 2003. See, too, I-ACtHR, *Advisory Opinion on the Juridical Status and Human Rights of the Child*, OC-17/02, 28 August 2002, Ser. A No. 17: *In the*

It further requires that ‘all efforts, including acceleration [or prioritization] of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.’<sup>91</sup>

In general, a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.<sup>92</sup> In some cases when the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in cooperation with the experts assisting him, will have to come to a decision as to the well-foundedness of the minor’s fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.<sup>93</sup>

On the other hand, in addition to general guarantees outlined above, which apply to adults as well as children, the specific vulnerabilities of children call for additional safeguards against arbitrary deprivations of liberty. As the ECtHR noted in *Muskhadzhiyeva*, the extreme vulnerability of a child takes precedence over the status of an illegal alien.<sup>94</sup>

The UN Convention on the Rights of the Child (CRC) contains a number of provisions relating to the protection of the rights of children in general, and asylum-seeking children in particular.<sup>95</sup> Article 37 provides children with a general right not to be detained or deprived of their liberty. Any detention permitted must be in conformity with the law, shall only be used as a measure of last resort and may endure only for the shortest possible period of time.<sup>96</sup> In all situations, and at all times, the ‘best interests of the child’ is to be the primary consideration<sup>97</sup>

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*hypothesis of incarceration of children, detention must be conducted in accordance with the law, during the briefest appropriate period and respecting the principles of exceptionality, temporal determination and last resort. Also, detainment of children “requires much more specific conditions in which it is impossible to solve the situation through any other measure.”*

<sup>91</sup> CRC Committee, General Comment No. 6 (2005), *The Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, UN Doc. CRC/GC/2005/6, 1 September 2005, para. 61.

<sup>92</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 46.

<sup>93</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 46.

<sup>94</sup> *Muskhadzhiyeva and others v. Belgium*.

<sup>95</sup> Article 1, CRC. Article 1 of the CRC actually provides ‘a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’

<sup>96</sup> Article 37(b) of the CRC

<sup>97</sup> Article 3, CRC. See, e.g., *Bakhityari v. Australia*, HRC 1069/2002, in which the HRC observed that in this case the children had suffered demonstrable, documented and on-going adverse effects of detention up until the point of their release and as a result, the Committee concluded that the measures (their detention) had not been guided by the best interests of the child. The two children had been in immigration detention for 2 years and 8 months at the time of their release. The detention was thereby arbitrary contrary to Article 9(1) of the ICCPR and also violated Article 24(1) of the same treaty.



### **V.1.2. Mentally disturbed persons**

It frequently happens that an examiner is confronted with an applicant having mental or emotional disturbances that impede a normal examination of his case. A mentally disturbed person may, however, be a refugee, and while his claim cannot therefore be disregarded, it will call for different techniques of examination.<sup>98</sup>

The examiner should, in such cases, whenever possible, obtain expert medical advice. The medical report should provide information on the nature and degree of mental illness and should assess the applicant's ability to fulfill the requirements normally expected of an applicant in presenting his case. The conclusions of the medical report will determine the examiner's further approach.

In examining his application, therefore, it may not be possible to attach the same importance as is normally attached to the subjective element of "fear", which may be less reliable, and it may be necessary to place greater emphasis on the objective situation.<sup>99</sup>

In view of the above considerations, investigation into the refugee status of a mentally disturbed person will, as a rule, have to be more searching than in a "normal" case and will call for a close examination of the applicant's past history and background, using whatever outside sources of information may be available.<sup>100</sup>

### **V.1.3. Women and Girls**

It is to note that women and girls are exposed to various problems especially in special moments that compel them to flee their countries of origin and therefore make them refugees. It is in that context that in 1991, the UN High Commissioner for Refugees (UNHCR) adopted Guidelines on the Protection of Refugee Women that had to align with the 1990 UNHCR Policy on Refugee Women, the Guidelines called for "integrating the resources and needs of refugee women into all aspects of programming so as to assure equitable protection and assistance activities<sup>101</sup>". The guidelines set standards by UNHCR that aim at providing protection and assistance to women and girls in the situation of refugee. Among those guidelines include the

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<sup>98</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 45.

<sup>99</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 45.

<sup>100</sup> UNHCR (n [Error! Bookmark not defined.](#)) p. 45.

<sup>101</sup> UNHCR, Guidelines on the Protection of Refugee Women, I.4. <https://www.refworld.org/pdfid/48aa83220>

ones relating to the reproductive health and sexual and gender based violence. In general, the protection concerns the following aspects:

- improve capacities for gender-sensitive refugee status determinations
- more vigorous use of national laws for enforcing protection and human rights
- improve registration mechanisms that allow each individual to obtain his or her own card

Successful assistance efforts that promote protection include:

- increase enrollment of girls in schools;
- set up measures to organize refugee women and include them in camp management;
- Direct involvement of women in food distribution;
- Incentives to employ more female staff in health and education programs,
- Wider availability of reproductive health services;
- Safe houses and counseling services for victims of trauma or violence.<sup>102</sup>

The treatment of asylum-seekers differs from country to country, depending on the financial resources available, the existing legal system, and social attitudes. ExCom Conclusion No. 93 (LIII) 2002 on the reception of asylum-seekers in individual countries confirms that basic standards of treatment must be upheld for all asylum-seekers, and the particular needs of women and children must be taken into account.<sup>103</sup>

Moreover, where there are no separate facilities housing unrelated males and females, or where the special needs of women cannot be met within reception and/or accommodation facilities , an appropriate solution maybe provided. .<sup>104</sup> Alternative arrangements must also take into account the particular needs of women, including concerns around violence and exploitation.<sup>105</sup>

#### **V.1.4. Legal Elderly**

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<sup>102</sup> UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation, <https://www.refworld.org/pdfid/48aa83220> , 2002.

<sup>103</sup> Executive Committee Conclusion No. 93 - 2002: Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002 available at <<https://www.unhcr.org/excom/exconc/3dafdd344/executive-committee-conclusion-93-2002-conclusion-reception-asylum-seekers.html>>

<sup>104</sup> UNHCR, Guidelines on Detention, Guideline 8.

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Older persons<sup>106</sup> may face serious protection risks resulting from standing alone, the age conditions or combination with other individual characteristics. The specific risks older persons face can be the result of physical and mental conditions, but can also result from obstacles encountered due to societal perceptions and the interactions of an individual with his or her environment. Older people in situation of refugee deserve protection as they can play important roles in their households and communities, for example as transmitters of knowledge, culture, and skills. This is why in 2018, the UHCR, put in place a policy on age, gender and diversity (AGD) to especially ensure the protection taking into account the following aspects:

- Older persons are often less mobile; their sight and hearing may fail; their psychosocial capacities and muscle strength may diminish; they may have chronic health problems and specific nutritional needs.
- Forcibly displaced older persons are at heightened risk of violence, including: sexual and domestic abuse; exploitation by family members; discrimination; and exclusion from access to humanitarian assistance, education, livelihoods, health care, a nationality, and other services. These risks are compounded for women, persons with disabilities.
- Unaccompanied older persons face particular challenges in emergency situations: to find adequate accommodation, protect their belongings, and obtain water, rations and fuel.
- In emergency refugee situations, family members may be separated or die, leaving older persons without traditional forms of family support. Older persons may also become the main caregivers for their grandchildren.
- The above risks may be heightened in non-camp settings and new displacement contexts, where the community is dispersed and community protection mechanisms may no longer function<sup>107</sup>.

The elderly may also require special care and assistance owing to their age, vulnerability, lessened mobility, psychological health, and other conditions. Without such care and assistance, any detention may become unlawful. In addition, alternative arrangements may

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<sup>106</sup> The United Nations defines an older person as someone over 60 years of age. However, ageing is not only a numerical designation, but a social construct based on custom, practice, and perceptions of the roles people play in their communities. <https://cms.emergency.unhcr.org/documents/11982/43853/UNHCR> .

<sup>107</sup> <https://cms.emergency.unhcr.org/documents/11982/43853/UNHCR>

need to take into account their particular circumstances, including physical and mental well-being<sup>108</sup>

## V.2. Legal protection as per their special status

### V.2.1. Minors (Children)

There is no legal seat in the 1951 refugee Convention nor in the 1967 protocol that elaborates on children refugees. A child under CRC, in its article 1 is defined as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The same Convention, in its article 22 states:” States Parties shall take appropriate measures to ensure that a child **who is seeking refugee status** or who is **considered a refugee** (...) shall (...) receive appropriate protection and humanitarian assistance in the enjoyment...” of rights recognized in the Convention. Under this Convention, a child who falls under a situation of a refugee shall be granted rights and protection as accorded to any other human being by the 1951 Convention and the 1967 Protocol. Again, even if the 1951 Convention does not explicitly mention children, but some of its provisions may let understand that the children are also concerned such as the right to education that is mainly a priority for children and young people. As a reminder, UNHCR has not kept a blind eye to children and therefore has made multiple documents to guide its work in that particular area.

The article 23 of the African Children Charter states: “All appropriate measures are to be taken in order to ensure that children seeking refugee status or who have been granted refugee status irrespective whether they are accompanied or not receive appropriate protection and humanitarian assistance in line with rights within human rights treaty bodies.

The 1987 **Conclusion on Refugee Children** (Conclusion No. 47 (XXXVIII)) stresses that "... the need for internationally and nationally supported programs geared to preventive action, special assistance and rehabilitation for disabled refugee children and encouraged States to participate in the "Twenty or More" Plan providing for the resettlement of disabled refugee children." The "Ten or More" plan created in 1973 and increased in 1984 to the "Twenty or More" plan, together with other special programs, gives the highest priority to children who are disabled or victims of torture.

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<sup>108</sup> See, e.g., Article 17(1), EU Reception Directive cited in UNHC (n 83) p 50.

The 1997 **Conclusion on Refugee Children and Adolescents** (Conclusion No.84) is concerned with the prevention of sexual violence, exploitation, trafficking and abuse. It addresses the rights of child and adolescent victims through provision and appropriate legal and rehabilitative remedies.

It is also to mention that the UNHCR has also adopted Guidelines on Refugee Children in 1988, which are incorporated into UNHCR Policy on Refugee Children.

In addition to that, the UNHCR, put in place in 2009, guidelines<sup>109</sup> to elucidate Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees. Though the the definition of a refugee contained in Article 1(A)2 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereafter “1951 Convention” and “1967 Protocol”) applies to all individuals regardless of their age, it has been interpreted in light of adult experiences. This situation has, for a long time affected the rights of the children by treating wrongly or even overlooking their claims.

In light of those guidelines, a child claiming asylum does not obtain it automatically. The child applicant must establish that s/he has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. As with gender, age is relevant to the entire refugee definition<sup>110</sup>. In this context, the UN Committee on the Rights of the Child, the refugee definition:

(.....) must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations

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<sup>109</sup> UNHCR, UN Refugee Agency , <https://www.unhcr.org/publications/legal/50ae46309/guidelines-international-protection-8-child-asylum-claims-under-articles.html>

<sup>110</sup> UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution Within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002 (hereafter “UNHCR, Guidelines on Gender-Related Persecution”), <http://www.unhcr.org/refworld/docid/3d36f1c64.html>, paras. 2, 4.

of persecution as well as gender-based violence in national refugee status determination procedures<sup>111</sup>.

Alongside age, there are number of other aspects to consider in determining the refugee status of a child inter alia the stage of development, knowledge, the conditions in the country of origins and vulnerability.

### **V.2.2. Women and Girls**

The primary legal basis for women and girls asylum seekers or refugees maybe found in the 1951 Convention relating to the status of refugees where it defines a refugee in its Article 1(A)2 and its 1967 Protocol (hereafter “1951 Convention” and “1967 Protocol”). The definition applies to all individuals irrespective of their gender. Hence, women and girls are also concerned by the rights and protection within the above mentioned convention and its protocol. Besides that,

The African Charter on Human and Peoples Rights, in its art 12(3) provides that “every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.” This provision grants the concerned rights to all individuals without any discrimination whatsoever. It follows that a non-national admitted to the territory of the state party cannot be expelled in decision taken in virtue of the law and equally, prohibits the mass expulsion of non- nationals.

In addition to that, UNHCR adopted a Policy of Refugee Women in 1990 and Guidelines for the Protection of Refugee Women in 1991. The Guidelines intended to review refugee women's legal and physical protection needs by engaging them in decisions relating to their own security and be able to identify dangerous and risky situations they are facing. The Guidelines aspire to improve the reporting of physical and sexual protection problem.

### **V.1.3. Legal Elderly**

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<sup>111</sup> UN Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children outside Their Country of Origin, CRC/GC/2005/6, Sep. 2005 (hereafter “CRC, General Comment No. 6”), <http://www.unhcr.org/refworld/docid/42dd174b4.html>, para. 74.

First and foremost, it is important to mention that elderly persons fall also under the definition for refugee provided by the 1951 Convention in its article 1(A)2 and its 1967 Protocol (hereafter “1951 Convention” and “1967 Protocol”). Since the definition applies to all individuals, it lets understand that even the category of elderly persons is inclusive. This goes in line with other rights that they can enjoy and exercise as enshrined in the 1951 Conventions and other human rights Treaty Bodies. However, they particular status implies that special measures are taken to ensure their care and welfare and, this should be underscored in a situation of refugee. In this regards, there are important UN principles for Older Persons<sup>112</sup> . These principles are summarized into five core principles that maybe followed whenever protecting and offering care to elderly persons:

**Independence entailing the following:**

- Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
- Older persons should have the opportunity to work or to have access to other income-generating opportunities.
- Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
- Older persons should have access to appropriate educational and training programs .
- Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
- Older persons should be able to reside at home for as long as possible.

**Participation entailing the following:**

- Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
- Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.

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<sup>112</sup> UN PRINCIPLES FOR OLDER PERSONS , <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-> , 16 December 1991General Assembly resolution 46/91

- Older persons should be able to form movements or associations of older persons.

**Care entailing the following:**

- Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
- Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.
- 12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.
- 13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.
- 14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

**-Self fulfilling entailing the following**

1. Older persons should be able to pursue opportunities for the full development of their potential.
2. Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

**-Dignity entailing the following**

1. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.
2. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.



### QUESTIONS FOR DISCUSSIONS:

1. Discuss the plausible special categories under refugee law
2. Discuss the principles under which elderly persons should be treated
3. Extract from CRC provisions that can go in line with refugee convention and make comments

# MODULE 6. PROTECTION OF REFUGEES AND ASYLUM SEEKERS FROM HUMAN TRAFFICKING

## I. Learning objectives

At the end of the module, participants will be able to:

- Identify the main differences between smuggling of migrants and trafficking in persons
- Understand that, in reality, smuggling of migrants and trafficking in persons are often overlapping and correlated phenomena, that commonly exist on a continuum
- Comprehend the importance and practical implications of differentiating between cases of smuggling of migrants and cases of trafficking in persons
- Identify situations where the distinction between smuggling of migrants and trafficking in persons might be challenging
- Understand what “trafficking in persons” is, the elements of the crime and what makes migrants vulnerable to trafficking
- Know the role of origin, transit, and destination States in preventing human trafficking
- Understand States’ obligations to protect and assist migrants who have fallen victim to trafficking, and their specific obligations in the case of children
- Know State approaches to criminalizing trafficking in persons
- Understand the importance of international, regional, bilateral, and national partnerships to address trafficking in persons in the context of migration
- Demonstrate an understanding in the application of the legal framework on human rights of migrant rights in day to day work.

## II. Core messages to be delivered

- Human trafficking is always an exploitation of vulnerability and migrants are among the most vulnerable populations. This vulnerability can arise in an instant, as a result of conflict or after a natural disaster.
- Migrants and refugees experience vulnerability along every step of their journey.

- Camps for refugees and internally displaced persons are prime targets for traffickers.
- Human trafficking involves the use of force, fraud, or coercion to obtain some type of labor, commercial sex act, or to harvest organs+
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### **III. Participants**

- Immigration officers: DGIE Interview/ Case Officer,
- High Court Judges,
- Lawyers,
- Refugee Status Determination Committee Members,
- MINEMA Eligibility Officers,
- MINEMA Ministerial Appeal Advisory Board Members,
- MINEMA Legal Advisor,
- Interpreters,
- Refugee Welfare Committee.

### **IV. Indicative content**

VI.1. What is human trafficking?

VI.2. What is the relationship between the refugee definition under international law and trafficking in persons?

VI.3. Understanding and responding to the special needs of asylum-seeking victims of trafficking

VI.4. What are the obligations of states with respect to trafficking?

VI.5. Rwanda's policy and legal framework on human trafficking.

## **MODULE 6. PROTECTION OF REFUGEES AND ASYLUM SEEKERS FROM HUMAN TRAFFICKING**

### **INTRODUCTION**

Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain. Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. Trafficking affects all regions and most countries of the world. While it is difficult to secure reliable information about patterns and numbers, our understanding about *why* trafficking happens has improved. Inequalities within and between countries, increasingly restrictive immigration policies and growing demand for cheap, disempowered labour are just some of the underlying causes that have been identified. The many factors that increase individual vulnerability to trafficking include poverty, violence and discrimination.

The exploitation of individuals for profit has a long history and international efforts to address it can be traced back at least a century, well before the birth of the modern human rights system. However, it is only over the past decade that trafficking has become a major concern. During that same period, a comprehensive legal framework has developed around the issue. These changes confirm that a fundamental shift has taken place in how the international community thinks about human exploitation. It also confirms a change in expectations of what Governments and others should be doing to deal with trafficking and to prevent it. Hence, the victim-centered approach is also gathering increased support from the international community. Human rights form a central plank of the new understanding and there is now widespread acceptance of the need for a human rights-based approach to trafficking.

In the specific case of refugees and asylum seekers, the latter are particularly vulnerable to abuse and exploitation at different stages of their flight, including at their destination. They may be compelled to use smugglers as their only means to free persecution, conflict and violence without travel or identity documents, to cross dangerous terrain, and to circumvent border controls that prohibit access to asylum-seekers, exposing them to risk. Once at their destination they may encounter discrimination, restrictions on freedom of movement, inadequate or nonexistent livelihood or educational opportunities, and experience limited access to humanitarian assistance or other support systems. This can push them to solicit smugglers in order to move in search of better protection and/or opportunities, or into the hands of traffickers who may prey on refugees and asylum-seekers residing in camps, reception centers or other settlements.

This module provides an introduction to the issue of human trafficking and an overview of how the issue intersects with the areas of asylum and international protection. The module introduces the different laws and policies in the area, specifically at international and regional level, defining human trafficking and establishing the protections available to victims. The module further provides an overview of the protections available to trafficking victims during the asylum process. The objective of the module is to increase your awareness of trafficking in human beings and capacity to identify cases of human trafficking and to help you understand the protections available to trafficked victims and the circumstances where victims of trafficking may be able to benefit from international protection.

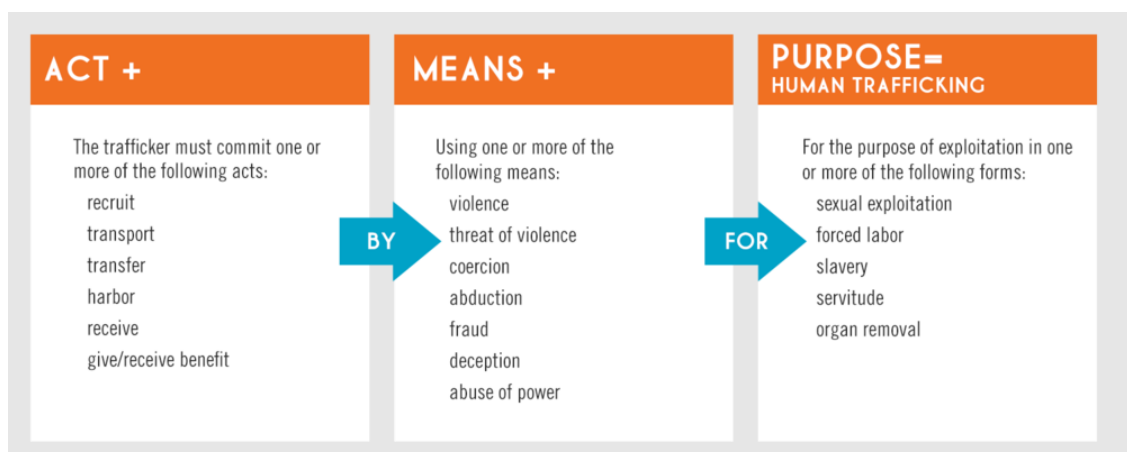
This Module is divided into five sections. **Chapter I** explores the definition of trafficking and its core elements. It also examines some of the myths and misunderstandings around the definition. **Chapter II** considers the relationship between refugees and asylum seekers and human trafficking. **Chapter III** outlines the main needs of asylum seeking victims of trafficking. **Chapter IV** turns to the obligations of States. It identifies the sources of these obligations and explains how a State may be legally responsible for the harm caused by trafficking, even if it did not directly cause it. Specific obligations of States are discussed with reference to victim protection and support; repatriation and remedies; criminal justice responses; and prevention. **Chapter V** focuses on the Traffic in Person in the Rwandan legal system.

## VI.1. WHAT IS HUMAN TRAFFICKING?

Trafficking in human beings is a crime and a human rights violation. It is defined in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) as:

"... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

### VI.1.1. ACT-MEANS-PURPOSE



Trafficking in human beings has three components, known as the act, the means, and the purpose.

**ACT:** These are the series of actions involved in the movement of a person and include recruitment, transportation, transferring, harbouring and receiving of persons.

**MEANS:** These are the methods used to gain the consent/ force the trafficked person to move including the threat or use of force, coercion, abduction, deception, fraud, abuse of power or the abuse of a position of vulnerability.

Where any of these means are used, any apparent consent from the trafficking victim is irrelevant.

**PURPOSE:** In order for the above acts to constitute human trafficking they must be for the purpose of a person's exploitation. Prevalent forms of exploitation include prostitution, forced labour and forced criminality.

Determining whether someone has been trafficked is particularly difficult in cases involving abuse of a position of vulnerability (APOV). In these cases, agencies and identifying authorities often focus on the apparent consent of the individual to their exploitation, without fully enquiring into the circumstances in which it was given. This difficulty can arise, in particular, in cases where a person does not self-identify as a victim of any exploitation.

To help identify these difficult cases, it is important to be aware of the meaning of abuse of a position of vulnerability. According to United Nations Office of Drugs and Crime (UNODC), abuse of a position of vulnerability involves both the presence of vulnerability, and the abuse of that vulnerability: The existence of vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim. Personal vulnerability for instance, may relate to a person's physical or mental disability. Situational vulnerability may relate to a person being irregularly in a foreign country in which he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's unemployment or economic destitution.

Such vulnerabilities can be pre-existing and can also be created by the trafficker. Pre-existing vulnerability may relate (but not be limited) to poverty; mental or physical disability; youth or old age; gender; pregnancy; culture; language; belief; family situation or irregular status. Created vulnerability may relate (but not be limited) to social, cultural or linguistic isolation; irregular status; or dependency cultivated through drug addiction or a romantic or emotional attachment or through the use of cultural or religious rituals or practices. Critically, a victim's vulnerability may be an indicator of [abuse of a position of vulnerability], but it will not constitute a means of trafficking in persons unless that situation of vulnerability has also been abused to the extent that the victim's consent is negated.

Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable

option available to him or her, and that belief is reasonable in light of the victim's situation. In determining whether the victim's belief that he or she has no real or acceptable option is reasonable, the personal characteristics and circumstances of the victim should be taken into account.

The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Ms. Sigma Huda, the Protocol defines trafficking in four sets of elements: act, means, end result and victim status:

1. Act: recruitment, transportation, transfer, harbouring or receipt of persons;
2. Means: threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
3. End result: exploitation, including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
4. Victim status: A victim of trafficking will be either a child or an adult.<sup>113</sup> If a victim of trafficking is a child, then the means become irrelevant, and the questions of whether trafficking has occurred will be determined only by reference to the act and the end result. If s/he is an adult, at least one of the means listed above must have been used in order for the act to constitute trafficking.

It is important to note that both consent and border crossing are irrelevant in determining whether trafficking has occurred. Article 3(b) specifies the irrelevance of consent. The Protocol definition also does not require that a trafficking victim is physically transported from one location to another. Trafficking in the victim's own home village or town is trafficking in the same way as trafficking that occurs across international borders.

## **VI.1.2. UNDERSTANDING EXPLOITATION**

The purpose of trafficking in human beings is the exploitation of the victim. This can take many forms. The main forms of exploitation encountered in trafficking cases include:

### **- Sexual exploitation**

This is the most prevalent form of trafficking in human beings in Europe and includes, amongst other things, exploitation in prostitution, production of pornography and sexual services in bars, hotels, spas, and massage parlours.

### **- Labour exploitation**

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<sup>113</sup> Special Rapporteur purposely used the term 'end result' instead of 'purpose', to avoid the question of mental state of a trafficker as a prerequisite to establishing that s/he has engaged in an act of trafficking. See Commission on Human Rights (2006) Integration of the Human Rights of Women and a Gender Perspective Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda. E/CN.4/2006/62.

The areas where victims of trafficking for labour exploitation are most often exploited include the agricultural sector, construction industry, service sectors, manufacturing sectors, domestic services as well as forced begging.

- **Forced criminal activities**

Trafficking for the purpose of forced criminal activities involves the exploitation of a person to commit crimes, including organised pick-pocketing, shoplifting, burglary, as well as harvesting/ trafficking drugs.

- **Forced begging**

This involves the exploitation of a person for the purpose of having them beg. In general, it is children who are victims of trafficking for forced begging.

- **Organ removal**

This involves exploiting people by removing their internal organs, which are used for transplant. Traffickers either force or deceive their victims into giving up an organ.

- **Other forms of trafficking**

Other identified forms of exploitation include forced marriage, forced adoption and forced surrogacy.

**Note:** In order for someone to be identified as a victim of trafficking, it is not necessary that the exploitation has already taken place; it is enough that the intention to exploit is established.

### **VI.1.1. 3. Other Important features of the definition**

The following are key features of the new international legal understanding about trafficking:

- **Trafficking affects women, men and children, and involves a range of exploitative practices.**

Trafficking was traditionally associated with the movement of women and girls into sexual exploitation. The international legal definition set out above makes clear that men and women, boys and girls can all be trafficked—and that the range of potentially exploitative practices linked to trafficking is very wide. The list of examples set out in the definition is open-ended and new or additional exploitative purposes may be identified in the future.

- **Trafficking does not require the crossing of an international border.**

The definition covers *internal* as well as cross-border trafficking. That is, it is legally possible for trafficking to take place within a single country, including the victim's own.

- **Trafficking is not the same as migrant smuggling.**

Migrant smuggling involves the illegal, facilitated movement across an international border for profit. While it may involve deception and/or abusive treatment, the *purpose* of migrant

smuggling is to profit from the movement, not the eventual exploitation as in the case of trafficking.

- **Trafficking does not always require movement.**

The definition of trafficking identifies movement as just one possible way that the “action” element can be satisfied. Terms such as “receipt” and “harbouring” mean that trafficking does not just refer to the *process* whereby someone is moved into situations of exploitation; it also extends to the *maintenance* of that person in a situation of exploitation.

- **It is not possible to “consent” to trafficking.**

International human rights law has always recognized that the intrinsic inalienability of personal freedom renders consent irrelevant to a situation in which that personal freedom is taken away. This understanding is reflected in the “means” element of the definition of trafficking. As noted by the drafters of the Trafficking Protocol: “once it is established that deception, coercion, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence.”<sup>114</sup>

## VI.2. WHAT IS THE RELATIONSHIP BETWEEN THE REFUGEE DEFINITION UNDER INTERNATIONAL LAW AND TRAFFICKING IN PERSONS?

Refugees are at particular risk for human trafficking – a consequence of their vulnerable status, the devastating losses they have experienced, and their precarious life situations until durable solutions become available. According to the United National High Commissioner for Refugees<sup>115</sup>, trafficking risks for refugees are at ever-increasing levels worldwide.

While not all victims of trafficking are refugees, depending on the circumstances, some victims of trafficking will qualify for refugee status under the 1951 Refugee Convention or regional refugee instruments. UNHCR’s Guidelines on International Protection No. 7 set out when the 1951 Convention refugee definition applies to victims of trafficking and persons at risk of being trafficked.

This is particularly relevant in situations where:

- a) victims who have been trafficked abroad seek international protection as a refugee in the State in which they are currently present;
- b) victims who have been trafficked inside their own country and then fled abroad seek international protection as a refugee; and

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<sup>114</sup> *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2), p. 270.

<sup>115</sup> Maria Riiskjaer and Anna Marie Gallagher, “Review of UNHCR’s Efforts to Prevent and Respond to Human Trafficking,” UNHCR Policy Development and Evaluation Service September 2008



c) persons who, although having never been trafficked, fear becoming a victim of trafficking in their country of origin and have fled abroad in search of international protection as refugees.

Under Article 1(A) of the 1951 Refugee Convention, victims of trafficking or persons who fear being trafficked are refugees if they have a well-founded fear of persecution in their country of origin where the state is unable or unwilling to protect them. Persecution is considered to include fear of serious harm or serious human rights violations such as threats to life or freedom. That persecution must be linked to their actual or imputed race, religion, nationality, membership of a particular social group, or political opinion, also known as the five Refugee ‘Convention Grounds’.

In trafficking contexts, the persecution feared by an individual or group can include, for example, exploitation on the basis of one’s ethnicity or minority group or reprisals and/or re-trafficking by their traffickers in their country of origin. It can also result from severe ostracism, discrimination or punishment by State authorities or community members for having been a victim of trafficking - whether at home or abroad. This risk is particularly pertinent among those who were trafficked for sexual exploitation.

### **VI.2.1. What are the challenges in providing international protection as refugees to victims of trafficking?**

Gaining access to asylum systems is a particular challenge which victims of trafficking often face. Victims of trafficking may be unaware of their right to apply for asylum and they may not receive timely information about how they can do so.

This can be especially difficult for children and women when the information about procedures for making an application for asylum are not available in a child friendly or gender-sensitive manner. At times, language barriers, accessibility and illiteracy pose additional problems to victims of trafficking. In other cases, legislative, regulatory or policy deficits may mean that immigration authorities, courts or even NGOs, only consider identified victims of trafficking as eligible for national protection schemes specific to victims of trafficking, and not as eligible for protection as refugees, or for a subsidiary or complementary protection status.

Further, asylum authorities are often ill-equipped to identify victims of trafficking from among asylum-seekers and may also lack the capacity to assess the relationship between an asylum-seeker’s actual or feared trafficking experience and their potential need for international protection as refugees. These challenges are in addition to: a) the fear that many victims of trafficking have of stigmatization, deportation by the authorities or retaliation by their traffickers, should they report that they have been, or are being, trafficked; and b) the frequent lack of systems which systematically identify victims of trafficking from among migrant and refugee populations. Article 14 of the United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children makes clear that implementation of the Protocol must respect international human rights and refugee law.

This means that efforts to combat trafficking in persons should not affect an individual's right to access asylum, nor should assistance be conditional on appearing as a witness in a trafficking court case, for example. When a victim of trafficking is able to apply for asylum, caution should also be taken against linking the merits of the asylum claim with a victim's participation in legal proceedings against their traffickers.

### **VI.2.2. What solutions are available to victims of trafficking who are refugees?**

Finding solutions for refugee victims of trafficking is important both for their recovery and to restoring their rights. This may be achieved through voluntary repatriation to their country of origin, local integration in a host country or by resettlement or humanitarian admission to a third country, but are not limited to these.

Voluntary repatriation should only be considered where a person expresses a clear and informed willingness to return and is able to do so in a safe, dignified and sustainable manner. Care must be taken to ensure protection against refoulement. Voluntary repatriation will not be suitable where there is a risk that a person would be re-trafficked on return, or where their return would not be safe and sustainable. Where refugee victims of trafficking have the possibility to integrate into their host communities, States and local organisations should support their access to services such as health services (including for mental health), trauma counselling, education, housing, vocational training and job placements in a gender sensitive and culturally appropriate manner.

Pathways to a third country including resettlement and humanitarian admission may be important solutions for refugees who are victims of trafficking and who may be unable to recover in their country of refuge from the torture or trauma they previously experienced, who face a continued threat by traffickers there, or who continue to experience the harmful consequences of severe stigmatisation as a known victim of trafficking in their host community.

### **VI.2.3. Reducing trafficking risks for refugees**

Improved protection for refugees from the risks of human trafficking can be achieved through improved approaches in five domains: the adoption of a refugee-centered philosophy, improved legal protections, shifts in relief and social assistance programs, an enhanced focus on durable solutions for refugees, and more information-sharing between those working on human trafficking and those working on refugee issues.

At the heart of any solution to the problem of trafficking risks for refugees is the need to recognize and support refugees' talents, strengths, and agency. Refugees are often treated as disposable people, pawns in larger political games or the unwanted refuse of intractable conflicts.

When refugees are able to participate in peacemaking, contribute to the societies they join, and to support their families, the risk of being trafficked is reduced. Partnering with refugees and

refugee communities in a meaningful way to identify and implement solutions is the best way to provide protection that addresses actual needs.

This approach entails the adoption of a refugee-centered philosophy that permeates every aspect of work and research. At each point in the migration passage, it is imperative that improved systems be put into place to identify and offer legal protections to refugees and victims of human trafficking. At border crossings and in migrant communities, refugees who go unidentified run the risk both of refoulement and of falling into the hands of criminal predators. True legal protection requires that nations provide a protective status under the law, offering the means for human sustenance and a life of dignity, as well as the practical means for individuals to access such protections. Children, as well as adults, must be covered. Border enforcement policies and migration controls must be tempered and balanced by mechanisms for ensuring the protection of the most vulnerable.

Laws intended to provide protections to either victims of trafficking or refugees should be sensitive to the areas of intersection so that risks are not unintentionally increased for either population. Assistance to refugees should include specific measures to prevent individuals from falling into the hands of human traffickers.

First of all, whether in a camp setting or in an urban situation, those responsible for providing protection and assistance should undertake a mapping of populations at risk within broader refugee populations, including women without family living in non-group settings.

Part of this exercise should include attention to the labor opportunities and conditions available to refugees. Where appropriate, the “Heightened Risk Identification Tool” should be used to identify individuals in need of enhanced protection services.

Secondly, education programs for refugees, to inform them of the risks of trafficking and how they can be reduced, should be particularly targeted to those at greatest risk. Programs intended to expand economic opportunities – for refugee women as well as men – are a critical anti-trafficking measure.

Third, special efforts to ensure the protection of women and children, and to maintain gender and age-based analytic frameworks in understanding specific refugee situations, are critical elements of risk reduction.

Fourth, separated children should have “best interest determinations” (BIDs) upon identification, and periodically thereafter, to ensure the safety and security of their placements and appropriate consideration of durable solutions.

Clearly, the best way to reduce trafficking risks for refugees is to provide them with a durable solution – one that offers permanence, legal status, safety, and a means of economic support. For individuals at the greatest risk, and for whom return and local integration are not options, expanded third-country resettlement options should be made more generously available.

Trafficking risks should be explicitly considered when considering which durable solutions are best.

#### **VI.2.4. International protection for trafficked persons or those with a fear of being trafficked**

Not all trafficked persons require international protection or seek asylum, as they would be able to go back to their own country safely. Some, however, may be unable to return for fear of further serious human rights violations upon return such as trafficking or revenge by traffickers, without state protection. They would fall within the definition of a refugee according to Article 1A(2) of the 1951 Convention and hence be entitled to international protection.

The saving clause in Article 14 of the Trafficking Protocol stipulates the possibility: ‘1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein. 2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of nondiscrimination.’

The importance of availability of asylum systems for trafficked persons is highlighted in several UN and the Council of Europe documents. The 2002 UNHCR Agenda for Protection, endorsed by the Executive Committee of UNHCR and welcomed by the General Assembly, calls upon states to ensure that their asylum systems are open to receiving claims from individual victims of trafficking.<sup>116</sup>

##### **- Can a trafficked person be a refugee?**

According to Article 1(A) of the 1951 Convention, the term 'refugee' shall apply to any person who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his [or her] country of origin and is unable, or, owing to such fear is unwilling to avail himself [or herself] of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.’

Trafficked persons and those who fear being trafficked can be defined as refugees under the 1951 Convention if they meet all the elements defined in Article 1(A).<sup>117</sup> If they have a well-

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<sup>116</sup> UNHCR (2002) The Agenda for Protection. A/AC.96/965/Add.1, 2002, Goal 2, Objective 2.

<sup>117</sup> UNHCR (2005) Combating Human Trafficking: Overview of UNHCR Anti-Trafficking Activities in Europe, Bureau for Europe Policy Unit, Geneva. Also see UNHCR Trafficking Guidelines 2006.

founded fear of persecution based on one of the Convention grounds and their country of origin is unable or unwilling to provide protection against further re-trafficking or reprisals by traffickers, they are entitled to international refugee protection.<sup>118</sup> There is no reason why a victim of trafficking who fears returning home due to the real possibility of being re-trafficked, targeted for reprisals, or threatened with death, should not be granted refugee status where the state of origin is unable or unwilling to protect that person against such harm.<sup>119</sup>

#### **- Can refugees be trafficked?**

It is also important to note that refugees and internally displaced persons fleeing from persecution could be easy targets for traffickers. This is because displacement and related vulnerability put refugees and internally displaced persons at a greater risk of exploitation and abuse. To access countries of asylum in an environment of tightening visa regimes and border controls, some refugees may resort to desperate and even illegal measures in their search for a safe country and livelihoods and can fall prey to trafficking.

### **VI.3. UNDERSTANDING AND RESPONDING TO THE SPECIAL NEEDS OF ASYLUM-SEEKING VICTIMS OF TRAFFICKING**

This section outlines the main needs of asylum seeking victims of trafficking. It further includes information that can be provided to trafficked victims where any of the below needs are identified. Where relevant, it suggests questions which could be used to help you establish the presence of these needs. These questions should only be used as a guide by the interviewer and adapted to the specific interview. The objective of this module is to provide you with the required knowledge to identify and respond to the special needs of trafficked victims.

#### **VI.3.1. Need for trust building and rapport**

Due to the very specific characteristics of trafficking and in particular the coercion and influence that traffickers exert on victims, as well as the victim's isolation from the rest of the society, building trust is fundamental to give them the opportunity to self-identify as victims of trafficking and/or tell their true story during the asylum process. Many victims report their lack of trust in State officials, as well as of people from the host society. Victims also report they often feel they are not believed, which sometimes put them in real distress and discourages them in advance from revealing the full extent of their experiences.

#### **VI.3.2. Need for medical assistance, mental health and psychological support**

Owing to the trauma connected with trafficking, victims often have complex medical needs, including the need for mental health and psychological support. In particular, trafficking that involves sexual exploitation results in significant harm that involves, but is not limited to,

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<sup>118</sup> Ibid.

<sup>119</sup> Edwards A (2003), 'Age and gender dimensions in international refugee law', in Feller E, Turk V, and Nicholson F (ed.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press., pp. 61.

“severe, brutal and long-term, gender-specific physical, gynecological and mental health harms, risks to life and traumas...” Below is a sample list of questions which could be asked relating to the need for medical assistance, including psychological support, in order to establish the presence of any such needs:

- How are you feeling?
- Do you have any health problems?
- Are you in any pain? now? regularly?
- Have you seen a doctor since arriving? If she is woman: A gynecologist?
- Do you take medication?
- Do you sleep well?
- Do you have nightmares?
- Are you anxious? Worried?
- Would you like to talk about these issues with someone?

### **VI.3.3. Need for legal support and advice**

In order to help trafficking victims traverse the often complex identification, immigration, and asylum processes, it is important that they are provided with legal support and advice. In order to establish the need for this support, it will be important to gauge the extent to which the person understands the different processes. Questions that could be asked in this regard include:

- What does being an asylum seeker mean for you? Do you know what it involves in terms of rights?
- Do you have any questions about the asylum procedure?
- What does “being protected” mean for you? Would you like us to accompany you to apply to remain here?
- If the facts of the trafficking are stated/admitted by the person: Do you know that anyone who has hurt you can be punished for this?
- Do you understand the term “victim” and what that implies? Would you be prepared to file a complaint/go to the police to explain what’s happened to you? It is not compulsory and you won’t be prosecuted for an offence.

### **VI.3.4. Need for receiving information on the asylum process and identification procedures for trafficked victims**

Where a possible victim of trafficking who may wish to apply for international protection is encountered, it is important that they can receive information on the asylum process. Possible victims of trafficking should also be systematically informed of their rights and entitlements as victims of trafficking, including when they are detected in the asylum process. Where applicable, they should also be informed about their right to benefit from a recovery and reflection period, during which they could consider whether to apply for international protection.

### **VI.3.4. Specific needs relating to the asylum interview**

Trafficked victims’ needs relating to the asylum process extend also to the asylum interview. It is important that they can be interviewed by a trained professional of the same gender, where

requested. This should also extend to the interpreter. This can help build trust and encourage disclosure. I

All applicants for international protection can request an interviewer and interpreter of the same gender for their asylum interview. This, however, must be done at the preliminary stage of the asylum process.

## **VI.4. WHAT ARE THE OBLIGATIONS OF STATES WITH RESPECT TO TRAFFICKING?**

Over the past decade there has been great progress in clarifying the rights of victims of trafficking to protection and support—and the corresponding obligations of States. While there are still some areas that remain to be settled, there is a general agreement around several core obligations, all based on a general duty to identify victims of trafficking in the first place. Some of these obligations are: providing immediate protection and support; providing legal assistance, including temporary residency, and not criminalizing the victims.

### **VI.4.1. Victim identification**

Victims of trafficking are often not identified and, as a result, are simply invisible. When victims of trafficking do come to official attention, they may be misidentified as illegal or smuggled migrants. This is significant because, as explained in the Recommended Principles and Guidelines, “a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights” (guideline 2). If a trafficked person is not identified at all or is incorrectly identified as a criminal or an irregular or smuggled migrant, then this will directly affect that person’s ability to access the rights to which she or he is entitled.

In short, failure to quickly and accurately identify victims of trafficking renders any rights granted to such persons illusory. The obligation to identify victims of trafficking is implied in all legal instruments that provide for victim protection and support. The Recommended Principles and Guidelines identify a range of practical steps that should be taken to ensure that victims of trafficking are quickly and accurately identified.

These include preparing written identification tools such as guidelines and procedures that can be used to support identification; and training relevant officials (such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants) in accurate identification and the correct application of agreed guidelines and procedures.

### **VI.4.2. Provision of immediate protection and support**

Victims who break free from their traffickers often find themselves in a situation of great insecurity and vulnerability. They may be physically injured as well as physically and/or emotionally traumatized. They may be afraid of retaliation. They are likely to have few, if any, means of subsistence. Unfortunately, the harm experienced by victims of trafficking does not

necessarily cease when they come to the attention of the authorities. Mistreatment by public officials may result in a continuation of an exploitative situation or the emergence of a new one. The harm already done to victims can be compounded by failures to provide medical and other forms of support—or by linking it to an obligation to cooperate that victims may not be willing or able to meet.

The State in which a victim is located is responsible for providing that person with immediate protection and support. This responsibility becomes operational when the State knows or should know that an individual within its jurisdiction is a victim of trafficking. The principle is applicable to all countries in whose territory the victim is located. It applies to all trafficked persons, whether victims of national or transnational trafficking.

The first and most immediate obligation of that State is to ensure that the victim is protected from further exploitation and harm—from those who have already exploited that person as well as from anyone else. What this means in practice will depend on the circumstances of each case. The standard of due diligence certainly requires States to take *reasonable measures* to this end. In most situations, reasonable protection from harm requires:

- Moving the trafficked person out of the place of exploitation to a place of safety;
- Attending to the immediate medical needs of the trafficked person;
- Assessing whether the trafficked person is under a particular risk of intimidation or retaliation.

The State in which a trafficked person is located is also required to provide that person with physical and psychological care that is adequate to meet at least immediate needs. Importantly, the provision of such care has been widely acknowledged to be a non-negotiable right of the victim: a right that should be recognized and implemented irrespective of that person's capacity or willingness to cooperate with criminal justice authorities. There is growing recognition that separating protection and support from victim cooperation in this way is a fundamental part of a human rights approach to trafficking.

#### **VI.4.3. Legal assistance and involvement**

Trafficked persons have an important role to play and a legitimate interest in legal proceedings against their exploiters. A human rights approach to trafficking requires that all efforts should be made to ensure victims are able to participate in legal proceedings freely, safely and on the basis of full information.

Victim involvement in legal proceedings can take different forms. Individuals who have been trafficked may provide evidence against their exploiters, either through written statements or in person, as part of a trial. They may also be called upon to provide a victim statement about the impact of the offence that could become part of a sentencing hearing. In civil proceedings against their exploiters, trafficked persons may be applicants and/or witnesses. Even a trafficked person who is unwilling or unable to testify still has a legitimate interest in the legal proceedings.

Victims of trafficking who are involved—or potentially involved—in legal proceedings have special needs and vulnerabilities that must be addressed. Obligations that flow from this are in



addition to the protection, assistance and support obligations mandated for all trafficked persons and discussed above. For example:

- Trafficked persons should be provided with legal and other assistance in relation to any court or administrative proceedings in a language they understand. This should include keeping victims informed of the scope, timing and progress of proceedings and of the outcome of their cases.
- Trafficked persons have a right to be present and express their views during any legal proceedings.

#### **VI.4.4. Non-criminalization of trafficked persons**

In countries of transit or destination, trafficked persons are often arrested, detained, charged, and even prosecuted for unlawful activities such as entering illegally, working illegally or engaging in prostitution. For example, they may not have the correct migration or work papers; their identity documents may be forged or have been taken away from them; and the exploitative activities demanded of a trafficked person, such as prostitution, soliciting or begging, may be illegal in the country of destination. Criminalization of trafficked persons is commonplace, even where it would appear obvious that the victim was an unwilling participant in the illegal act. Such criminalization is often tied to a related failure to identify the victim correctly. In other words, trafficked persons are detained and subsequently charged, not as victims of trafficking, but as smuggled or irregular migrants or undocumented migrant workers. Countries of origin sometimes directly criminalize victims upon their return, penalizing them for unlawful or unauthorized departure.

### **VI.5. RWANDA'S POLICY AND LEGAL FRAMEWORK ON HUMAN TRAFFICKING**

#### **VI.5.1. Rwanda's Constitution**

The Rwandan Constitution forms the legal foundation upon which other laws are based. It provides a clear direction on a set of fundamental human rights and principles, which are relevant to human trafficking. Article 13 prescribes the inviolability of a human being. Similarly, Article 14 provides that the human being is sacred and inviolable. The acts of TIP are a negation of the inviolability of a human being, which is a sacred constitutional right. The state has an obligation to respect, protect, and defend this sacred principle of inviolability of the human being. In this regard, the state is required to put in place meaningful mechanisms to prevent TIP, protect victims of this crime, and prosecute those who commit this crime.

The Constitution also provides for specific measures for the protection of the child. Article 19 states that: "Every child has the right to specific mechanisms of protection by his or her family, other Rwandans and the State, depending on his or her age and living conditions, as provided for by national and international law" (Constitution of the Republic of Rwanda, 2015). Article 37 of the Rwandan child law codifies specific protective measures for child protection, including the prohibition of forcing a child into begging.<sup>120</sup>

#### **VI.5.2. Prevention of Traffic In Person (TIP)**

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<sup>120</sup> Law No. 54/2011 of 14/12/2011 relating to the rights and the protection of the child (Rwanda)

Prevention is set out in a number of policies and strategies designed and implemented by the line ministry. In the framework of Article 3, paragraph 12 of the TIP law, the MINIJUST is in charge of drafting policies and strategies on human trafficking. Article 4 of the law stipulates that the MINIJUST shall cooperate with public and private institutions, civil society, and international organisations for the prevention of TIP. The law is silent on the modalities of establishing a coordinating counter-trafficking body to bear the responsibility of steering counter-trafficking policies and strategies. It is assumed the current counter-trafficking task force, revived in June 2018,<sup>121</sup> should be the coordinating body; it may be expanded to include other non-state actors. Part of its responsibility is to design, implement, and monitor a referral system based on cooperation between various stakeholders.

To prevent transnational TIP effectively, Article 6 refers to the duties of a commercial carrier that should verify all travel documents and make sure they comply with the requirements to enter any destination country. Article 3, paragraph 22 defines a commercial carrier as any legal or natural person<sup>122</sup> who engages in the international transportation of goods or people for commercial gain. This definition is consistent with the Palermo protocol<sup>123</sup> and the Model Law against Trafficking in Persons (UNODC, 2009)

### **VI.5.3. Protection of and assistance provided to victims**

This sub-section reviews the legal foundation of international instruments on which Rwanda's TIP law is based, specifically in relation to protecting and providing assistance to VoTs.

Two articles from the UNTOC are particularly relevant. Article 25, paragraph 1 requires states to “take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation” (United Nations Convention against Transnational Organized Crime, 2000). Article 24, paragraph 4 requires states to ensure that protection extends to all victims, including those who are witnesses in any investigative proceedings and prosecution.

Article 6, paragraph 1 of the Palermo protocol supplements the UNTOC in that it requires states to take all appropriate measures to protect the privacy and identity of victims in legal proceedings, including ensuring confidentiality to the extent possible as provided for in the national legislation. Article 9, paragraph 1 also refers to protection from the risk of revictimisation, a significant issue in a counter-trafficking response.

These international legal provisions have been incorporated into Article 7 of the Rwandan TIP law, which stipulates that, “protection provided to victims is also extended to the victim's accompanying dependents to avoid any potential retaliation measures exercised by traffickers over the families of victims”. Article 9 of the law provides for the protection of victims during court proceedings where the judge can order any protective measures commensurate with the level of safety and confidentiality that the case requires.

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<sup>121</sup> Source: IOM Rwanda

<sup>122</sup> This can be a person, an organisation, or an institution.

<sup>123</sup> Articles 9, 10, 11, 12, and 13 of the Palermo protocol require states to undertake public campaigns, and social and economic measures to address the root causes of trafficking, check the travel documents of passengers by transportation carriers, ensure adequate border control and management, cooperate bilaterally in verifying the validity of travel documents, and strengthen the capacity of immigration front-line officials.

Section 3 of Rwanda’s TIP law provides for basic assistance services to victims. Article 11 details supports granted to the victim without discrimination, including the provision of healthcare, waiving of legal and administrative fees, free legal assistance, the right to get information in the language the victim is comfortable with, and the right to participate in legal proceedings related to perpetrators.

Article 12 outlines more specific assistance to a child victim in accordance with a fundamental principle contained in all legal instruments related to child protection: “any policy, law, strategy, programme, or decision at any phase should assess the best interest of the child and align to it” (see, for example, Article 3 of the Convention on the Rights of the Child, 1989).

In the section related to protection of and assistance offered to victims, Article 13 prescribes a non-Rwandan to remain in its territory as far as the identification is ongoing for a minimum period of six months until the conclusion of the legal proceedings. Article 14 allows the MINIJUST, in collaboration with the authority in charge of immigration and emigration, to repatriate the victim. Article 15 stipulates that if the victim is Rwandese or a permanent resident of Rwanda, he/she is granted the right to return to Rwanda while his/her dignity, safety, and privacy are fully safeguarded. If he/she does not have proper travel documents, as is often the case, he/she is granted the necessary travel documents. In addition, he/she is provided with the means to cater for his/her transportation and repatriation expenses.<sup>124</sup>

#### **VI.5.4. Penalties for offences of TIP**

Section 3 of the TIP law outlines the sentencing principles applying to TIP. It sets out two main principles in favour of victims. First, consent of the victim should not be invoked as an acceptable excuse for traffickers as far as the purpose of exploitation has been proved beyond reasonable doubt. Second, the victim has a specific relative judicial immunity against prosecution for illegal entry or any illegal action that is a direct consequence of his/her situation as a trafficked person.

When TIP occurs in Rwanda, the sentence for imprisonment should not be less than 10 years and not exceed 15 years, in addition to fines between 10 and 15 million Rwandan francs (RWF), or between 11,000 and 17,000 USD. If the crime is transnational, or committed across borders, the sentence increases to 20 years but not exceeding 25 years of imprisonment (Article 18, paragraphs 1 and 2). The fine also increases: the convicted trafficker gets a fine of not less than 20 million and not more than 25 million, or between 22,000 and 27,000 USD. These sanctions are imposed cumulatively to the offender.

Furthermore, the law takes into account the extended criminal responsibility of private sector actors who deliberately facilitate and promote TIP. They can also be held responsible by virtue of their participation in the commission of the TIP crime or their contribution to a criminal enterprise. In terms of sentencing, they are held individually accountable for their role in the offence and are liable to an imprisonment of not less than seven years and not exceeding 10 years, with fines of 7–10 million RWF (Article 19).

The section also introduces a provision on aggravating circumstances (Article 20), which are exhaustive. These circumstances include serious harm such as injury, disability, disease,

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<sup>124</sup> These provisions are adapted from Articles 6, 7, and 8 of the UNTOC on the assistance, protection, and repatriation of victims.

suicide, and death as a direct consequence of TIP, or when the TIP crime involves particularly vulnerable persons, or if it is proven the trafficker operates within an organised crime network. Other aggravating circumstances include cases of recidivism, or when the victim is a disabled person or a pregnant woman, or when the trafficker and victim were engaged in a trusted professional relationship. If the conditions detailed above are met and the offence is committed against a child, the perpetrator gets the highest imprisonment sentence, which is life imprisonment, and a fine of 15–20 million RWF.

Article 21 prescribes that while proceeding with court adjudication, the court reserves the right to seize and confiscate all materials, including immovable properties, proceeds of the crime, and all objects used to commit the offence.

Article 22 establishes a different sentencing regime for those who knowingly engage in forced labour, slavery, and related services (between one and three years, and a fine of 1–3 million RWF). In the case that a TIP victim is forced into labour, the sentence increases to between five and 10 years, with a fine of 5–10 million RWF. In a bid to discourage child exploitation and particularly vulnerable persons, if forced labour is committed against a child and particularly a vulnerable person (people with disabilities), the offender is liable to an imprisonment of between 10 and 15 years, and a fine of 10–15 million RWF.

Article 23 sets out particular offences related to exploitation resulting from guardianship and adoption to protect particularly vulnerable persons (orphans) when intention for exploitation is proven. The offender gets life imprisonment to deter serious crime against most vulnerable persons such as children.

Sexual exploitation is a separate offence different from TIP, which is outlined in Article 24. If any sexual action is proved to be exploitative, then perpetrators, accomplices, and facilitators of the crime can be sentenced to an imprisonment of between three and five years, and a fine of 3–5 million RWF. The penalty is doubled in some specific situations such as in cases of co-offenders, or if the crime is committed by an ascendant of the victim or by a domestic servant of the victim, or if the offender exercises authority over the victim. The provision is assumed to go beyond the definition of human trafficking to all related sex offences.

#### **QUESTIONS FOR DISCUSSIONS:**

1. How does trafficking in persons happen in the context of migration?
2. Discuss the Rwandan government's role in combatting TIP?
3. Why is it important to properly identify trafficking victims?

#### **KEY INTERNATIONAL INSTRUMENTS FOR REFERENCE**

- 1951 Convention relating to the Status of Refugees
- 1967 Optional Protocol relating to the Status of Refugees
- Universal Declaration of Human Rights (art. 14)

- African [Banjul] Charter on Human and Peoples' Rights (art. 12)
- OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
- Convention on the Rights of the Child (art. 22)

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**A5. Agreement on Provision of Legal Aid for Asylum Seekers between the  
Ministry of Justice and the Rwanda Bar Association, 1 March 2023**

**AGREEMENT ON PROVISION OF LEGAL AID FOR ASYLUM  
SEEKERS**

**BETWEEN**

**THE MINISTRY OF JUSTICE (MINIJUST)**

**AND**

**THE RWANDA BAR ASSOCIATION (RBA)**

1



This Agreement is made on ...../...../2023, by and between:

**The Ministry of Justice**, hereinafter referred to as “MINIJUST” with its head office in the City of Kigali, E-mail: [info@minijust.gov.rw](mailto:info@minijust.gov.rw), Website: [www.minijust.gov.rw](http://www.minijust.gov.rw), represented by Théophile MBONERA, the Permanent Secretary/Solicitor General;

And

**The Rwanda Bar Association**, hereinafter referred to as “RBA”, with its Address: P.O Box 3762 Kigali, e-mail: [info@rwandabar.org.rw](mailto:info@rwandabar.org.rw), Duly represented by its President, Me Moise NKUNDABARASHI.

Both, **MINIJUST and RBA**, hereinafter called “the parties”;

#### **Preamble**

**Whereas**, on 13<sup>th</sup> April 2022, the Government of the Republic of Rwanda and the Government of the United Kingdom of Great Britain and Northern Ireland entered a Memorandum of Understanding for the Provision of an Asylum Partnership Arrangement to strengthen shared international commitments on the protection of refugees and migrants (UK-Rwanda MEDP), which provides for legal assistance to each relocated individual at every stage of their asylum claim;

**Whereas** MINIJUST and RBA have existing corporation to provide legal aid services to juveniles in conflict with the law; indigent litigants who cannot afford to pay advocates services before the Supreme Court and the Court of Appeal; indigent detainees transferred to Rwanda from the International Residual Mechanism for Criminal Tribunals or other Countries and other categories of indigents and vulnerable persons;

**Whereas** the Ministry in charge of Emergency Management (MINEMA) entered into an MOU with MINIJUST on provision of legal aid to asylum seekers from the United Kingdom through the existing corporation between the MINIJUST and RBA to ensure that they are provided with legal assistance in their refugee status application process;

**Considering** the provisions of the National Legal Aid Policy and other national legal instruments in relation to Legal Aid and in accordance with the Refugee Convention, National and International immigration laws;

**Now therefore**, in consideration of mutual promises and subject to the conditions contained herein, the parties agree as follows:

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### **Article 1: Definitions**

In this agreement:

- a. “**Relocated asylum seekers**” means individuals relocated from the United Kingdom to Rwanda under the UK-Rwanda MEDP Partnership and its Addendum who subsequently apply for refugee status in Rwanda under Rwandan laws to that effect.
- b. “**Legal assistance**” means any legal aid, advice, counselling and/or representation provided by an advocate or persons acting under the supervision of the advocate to relocated asylum seekers under the framework this agreement.

### **Article 2: Objective of the agreement**

The purpose of this agreement is to lay down implementation mechanism of cooperation between both parties in relation to provision of legal assistance to asylum seekers relocated under the UK-Rwanda MEDP.

### **Article 3: Commitment of RBA**

The RBA undertakes to provide legal assistance to relocated asylum seekers at all appeal stages of their asylum claims, in their process of seeking refugee status in Rwanda, as provided for under the relevant laws and procedures in place. This includes legal assistance at the stage of the Ministerial Appeal Board level and legal representation at the stage of the appeal at the High Court in accordance with the relevant rules and procedures in place.

### **Article 4: Activities covered by this agreement**

Activities covered by this agreement shall consist of the legal assistance to the relocated asylum seekers at stages specified under article 3 above as well as any managerial and administrative activities for this Agreement, as necessary.

### **Article 5: Duties of advocates involved in representation of asylum seekers**

Any advocate assigned with providing legal assistance to the relocated asylum seeker shall:

1. Meet the applicant for preparation, assistance at stages specified under article 3.
2. Provide legal advice to the applicant in relation with his/her case;
3. Carefully prepare the case of the assisted /represented applicant;
4. Assist/represent the applicant before all stages specified under article 3;
5. Prepare on time required documents, application or courts submission and pleading notes;
6. File appeals or other possible means provided for by the law;
7. Provide progress reports;





8. Carry out any other lawful activity for the best interest of the applicant.
9. Attend any trainings required by MINIJUST

#### **Article 6: RBA Responsibilities**

The Rwanda Bar Association undertakes to:

1. Enter into Contract with Advocates to implement the activities described in article 4;
2. Ensure that service provided by the contracted advocates is adequately delivered;
3. Ensure coordination and management of activities of the contracted advocates;
4. Monitor the performance of the contracted advocates and replace the nonperforming ones;
5. Provide to MINIJUST the Standard Operating Procedures of the end-to-end process of providing advocates to relocated asylum seekers.
6. Prepare and submit to MINIJUST a quarterly progress report. The report shall include narrative and financial aspects as well as status of processed cases with details on the legal assistance provided to relocated asylum seekers, advocate who provided the services, expenses incurred as facilitation fees to provide legal assistance to relocated asylum seekers;
7. Take any measure aimed at improving implementation of this Agreement.
8. Avail advocates who will be providing legal assistance to legal trainings provided by MINIJUST on matters relevant to refugee protection.
9. Participate in awareness programs for asylum seekers on their legal aid rights.

#### **Article 7: MINIJUST responsibilities**

The Ministry of Justice undertakes to:

- a) Facilitate the communication between the RBA and other key partners;
- b) Supervise the implementation of this Agreement;
- c) Receive and Approve RBA quarterly progress report;
- d) Organize quarterly information sharing meetings on the implementation of this Agreement;
- e) Appoint a staff to manage this Agreement in collaboration with the focal person from RBA;
- f) Process requests and follow up on payments;
- g) Coordinate awareness programs for asylum seekers on their legal aid rights
- h) Coordinate advocates trainings on the law relating to refugees;

#### **Article 8: Monitoring and Evaluation**

7.1. Parties agree to conduct regular Monitoring and Evaluation meetings aimed at enhancing quality assurance of the program and assessing the performance of the Advocates involved in this program.

7.2. The RBA will allow representatives of MINIJUST access to the program headquarters and to all relevant records and documentation for the purpose of monitoring and evaluation of the



program.

**Article 9: Reporting requirements**

Not later than 15 days after the end of each quarter, the RBA will prepare and submit to MINIJUST:

- a) A progress report explaining the activities that have been undertaken, the milestones that have been reached within the timetable specified and challenges if any and corrective action proposed. Progress reports will be signed by the duly authorized person of the RBA. The agreed-upon template for the progress report is appended to the present Agreement as Annex A.
- b) A financial report summarizing income and expenditure and any variances from the budget. Financial reports shall be signed by the duly authorized person of the RBA.

**Article 10: External review**

- 10.1. MINIJUST shall visit RBA quarterly, to assess progress and financial probity.
- 10.2. In case MINIJUST feels that insufficient progress has been made or that expenditure has been incurred on activities unrelated to the agreed programme, it may withhold or suspend any further transfers until such time the RBA has made sufficient corrective action to the satisfaction of the MINIJUST.
- 10.3. In case MINIJUST feels that the financial information being provided is inaccurate or inadequate, or if there is insufficient supporting documentation to substantiate any claim for disbursements of the fund, it reserves the right to request an independent audit on RBA expenses in case inaccuracy is confirmed.

**Article 11: Monitoring & Evaluation Committee**

Both parties agree to establish the Program's M&E Committee which will be composed of the following persons:

- a) The Permanent Secretary/Solicitor General/ MINIJUST (Committee Chairperson);
- b) The Head of the Access to Justice Department in the Ministry of Justice;
- c) The Head of the International Justice and Judicial Cooperation Department;
- d) The RBA President or his/her representative;
- e) The RBA Executive Director or his/her representative
- f) The Representative of MINEMA
- g) Any other person as may be determined by the Parties.

The M&E Committee shall meet once every six (6) months in ordinary session or anytime when deemed necessary.



### **Article 12: M&E Committee responsibilities**

The M&E committee shall have the following responsibilities:

- a) Monitor and evaluate the program;
- b) Formulate recommendations to improve the program implementation;
- c) Decide on the challenges and/or issues that may be raised;
- d) Examine any other matters concerning the program.

### **Article 13: Confidentiality**

The parties shall for all purposes and at all times maintain the details of this agreement as confidential. Further, the parties hereto undertake to maintain as confidential all information, sensitive materials or any other matter, not intended for dissemination that may come in their possession in connection with the program. The parties shall agree in writing to the disclosure of any information obtained under this agreement to a third-party.

### **Article 14: Facilitation fees**

14.1. An agreed-upon amount will be allocated to every case, and shall cover all administrative and court fees required for all steps of the case. RBA will agree with Advocates on fees to be paid on each stage of representation.

14.2. The Ministry of Justice shall forward payment request for facilitation fees for the implementation of activities as detailed in articles 3 of this Agreement to MINEMA which will transfer the funds in advance to RBA.

14.3. Once funds are used up to 85% of disbursed funds, another request for facilitation fees will be submitted to MINEMA for other equal installment.

14.4. The allocation of agreed-upon disbursements will be as follows:

<b>N</b>	<b>Category</b>	<b>Activity description</b>	<b>Amount needed</b>	<b>TVA 18%</b>
1.	Project management and administration	Staff facilitation	<b>1.500.000Rwf/per month</b>	N/A
2.	Legal Aid to Asylum Seekers	Lawyers facilitation fees (lawyers who will assist to Asylum seeker in application process up to ministerial level)	<b>500.000/per case</b>	<b>90.000Rw</b>



	Lawyers Facilitation fee that will assist in appeal at High Court Level	1.000.000Rwf/ per case	180.0001 f
	Court fees	40.000Rwf	

**Article 15: Transfers modalities & Bank Account**

The facilitation fees shall be deposited directly by MINEMA to the RBA's following account:

**Bank Name:** GT BANK RWANDA LTD

**Account Holder:** RWANDA BAR ASSOCIATION

**Account Number:** 211/136331/1/5100/0

**Article 16: Implementation Committee**

16.1. Both parties agree that the coordination, management and administration of the programme under this agreement shall be undertaken by the Implementation Committee established to that effect.

16.2. The implementation Committee shall be composed of the following persons:

- a) A representative of the Ministry of Justice.
- b) A representative of the RBA.
- c) A representative of MINEMA.
- d) Any other relevant person agreed upon by the parties.

16.3. The implementation Committee shall have the following responsibilities:

- a) Compilation of monthly activity progress reports, preparation of quarterly and half-yearly progress reports (a synthesized narrative and financial qualitative and quantitative quarterly report to be submitted to the Ministry of Justice),
- b) receiving queries from Advocates and partners concerning this programme and submitting them to the competent authorities for handling,
- c) monitoring the programme activities,
- d) collecting, analyzing and processing quantitative and qualitative data concerning this



programme,

e) regular communication for effective programme implementation,

f) acquiring stationary for reports & dossiers printing spent on daily coordination and,

g) management and administration of the programme to ensure it delivers its expected results.

16.4. The Implementation Committee shall meet at least once (1) every three (3) months in ordinary session or as necessary.

16.5. The Implementation Committee shall report to the M&E Committee.

**Article 17: Agreement modification**

This agreement may be modified upon written consent of both parties.

**Article 18: Termination**

**By MINIJUST**

MINIJUST may terminate this agreement, by not less than thirty (30) days' written notice of termination to RBA:

- (a) If RBA does not remedy a failure in the performance of their obligations under the agreement;
- (b) If, as the result of Force Majeure, the RBA are unable to perform a material portion of the Services;
- (c) The closing down of RBA as an independent organization;
- (d) Termination of the Asylum Partnership Arrangement between Rwanda and United Kingdom, or
- (e) If MINIJUST, in its sole discretion, decides to terminate this agreement.

**By RBA**

RBA may terminate this Agreement, by not less than thirty (30) days' written notice to the MINIJUST,

- (f) If funds due is not transfer pursuant to this Agreement and not subject to dispute within forty-five working (45) days after receiving written notice that such transfer is overdue or If, as the result of Force Majeure, the Advocates are unable to perform a material portion of the Services for a period of not less than ninety (90) days.

Once it appears that one of the advocates or more involved in this programme was involved in any unprofessional practice or was professionally misbehaved during the representation/assistance to



the asylum seeker, MINIJUST shall request RBA to make a replacement of that advocate without necessarily terminating the agreement.

### **Transfer upon Termination**

Upon termination of this agreement, a transfer to RBA for the Services satisfactorily performed prior to the effective date of termination will be made; in case there is any fund held by RBA but not due, it will be refunded.

### **Article 19: Governing law**

This agreement and all documents supplemental thereto are governed by and are to be construed in accordance with the laws of the Republic of Rwanda.

### **Article 20: Force Majeure**

For the purposes of this agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the agreement impossible or so impractical as to be considered impossible under the circumstances.

The failure of a Party to fulfill any of its obligations under the agreement shall not be considered to be a breach of, or default under this Cooperation Agreement in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has (a) taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this agreement; and (b) informed the other Party as soon as possible about the occurrence of such an event.

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **Article 21: Disputes resolutions**

The parties agree to use their best efforts to settle amicably any dispute arising out of or in connection with the agreement.

In the event that a dispute arises between RBA and MINIJUST that cannot be settled amicably and by agreement between the parties, the dispute shall be referred to competent courts of Rwanda.



**Article 22: Duration of the agreement**

Subject to the provision of the Arrangement between Rwanda and United Kingdom, this agreement shall commence from the date it is signed by the parties, and shall continue for a period of 5 years, unless terminated by one of the contracting parties as provided in this Agreement.

**Article 23: Effectiveness of the Agreement**

This agreement takes effect on the date of its signature by both parties.

**In Witness whereof**, the parties have caused this agreement to be duly executed by and through their duly authorized representatives

Done in Kigali, on 04/03/2023

**For and on behalf of the Ministry of Justice**



**Ms. Théophile MBONERA**  
**Permanent Secretary /Solicitor General**

**For and on behalf of the  
Rwanda Bar Association (RBA)**



**Me. Moise NKUNDABARASHI**  
**President**

## Annex A: Progress report template

### QUARTERLY PROGRESS REPORT

<b>Project Title</b>	
<b>Project Start Date:</b>	
<b>Project End Date:</b>	
<b>Year</b>	
<b>Reporting Period</b>	

1. EXECUTIVE SUMMARY
2. PROJECT IMPLEMENTATION PROGRESS
  - A) Coordination
  - B) Achievements in Legal Aid

LEGAL ASSISTANCE TO ASYLUM SEEKERS					
	Boys	Girls	Women	Men	Total
# of identified asylum seekers in need of refugee status					
# of identified asylum seekers assisted to prepare applications.					
# of identified asylum seekers assisted to prepare applications before RSD committee					
# of persons of concern received Refugee status					
# of persons of concern assisted to prepare applications at Ministerial level					





# of persons of concern received refugee status at ministerial level					
# of persons of concern assisted to prepare appeal file					
# of persons of concern assisted before High Court					
# of Persons of concern received refugee status by High court					

3. STATUS OF THE CASES PER CATEGORIES BY TIME OF REPORTING
4. SUCCESS STORIES
5. CHALLENGES AND RECOMMENDATIONS

